

## CHAPTER 180. INTRODUCTION TO INVESTIGATION AND COMPLIANCE RELATED TASKS

### SECTION 1. FAA COMPLIANCE PHILOSOPHY

**1. GENERAL.** This group of tasks addresses investigative techniques, acquisition of evidence, and analysis of Enforcement Investigation Reports as they relate both to the Aviation Safety Inspector (ASI) and Federal Aviation Administration (FAA) revised philosophy for achieving regulatory compliance. Specifically, this guidance applies to operations conducted under Title 14 of the Code of Federal Regulations (14 CFR) parts 61, 91, 101, 103, 105, 125, 133, 137, and 141. For detailed guidance inspectors shall consult the most recent edition of FAA Order 2150.3, Compliance and Enforcement Program, during conduct of any tasks in chapters 181 through 184 following.

#### A. Definitions

(1) *Compliance* means conforming or adapting actions to a rule or to necessity.

(2) *Remedial Training* (RT) is a form of FAA administrative corrective action that uses education as a tool to allow airmen who have committed an inadvertent violation to increase their knowledge and skills in areas related to the violation.

(3) “*Significantly unsafe*” will be defined in detail in an upcoming change to Order 2150.3. The definition will center on the difference between the potential and actual hazard created by an act of non-compliance. For example, an incident where an actual hazard was posed may require legal action, but an incident where the hazard was only potential may be better handled with administrative action.

**B. Regulatory Authority.** Regulatory authority for investigation of the facts surrounding an act of non-compliance or a compliant is found in Title 49 of the United States Code (49 U.S.C.) and the Airline Deregulation Act of 1978.

### 2. BACKGROUND.

**A. Public Confidence in the FAA.** Public confidence in the FAA and its enforcement policy is essential to aviation safety. Only in an environment of mutual trust and respect will pilots continue their

voluntary compliance with the 14 CFR that has made this country’s aviation system as reliable and safe as it is today.

(1) Mandatory sanctions may have only limited usefulness in achieving compliance. When people perceive sanctions as punitive or unfair, sanctions lose their effectiveness.

(2) Enforcement actions that airmen have perceived as punitive have contributed to some undermining of the willing cooperation between airmen and FAA inspectors. The safety record as it stands was achieved through a *partnership* between the FAA and the aviation public. When mistrust intrudes, the partnership suffers, and that has serious implications for the essential, free exchange of aviation safety information. The inspector’s “middle name” is Safety, but when this mis-perceived mistrust prevents the inspector’s message from being heard, the FAA has to include alternative means of assuring voluntary compliance.

**B. Compliance Standard.** The ultimate goal, of course, is **total compliance**. The FAA and the public can accept nothing less. The inspector’s public responsibility is to assure compliance with the rules and to promote aviation safety. The airman’s responsibility is to comply and through compliance to participate in the promotion of safety. These responsibilities do not preclude inspectors nor airmen from being reasonable.

(1) Punitive enforcement action without consideration of the circumstances surrounding an incident cannot succeed in an environment that encourages freedom of expression and guarantees an airman’s access to the aviation system. Voluntary compliance must be fostered and encouraged by the words, actions, and deeds of both airmen and inspectors.

(2) Compliance can be obtained through a variety of means, such as initial training, continuing education of airmen, counselling, and legal enforcement action. Training, education, and enforcement each have a different role in achieving compliance.

(a) Each airman must have a sound establishment in compliance during his or her initial training. Here is where attitudes toward safety and good judgement are developed, hopefully by instructors with positive attitudes themselves.

(b) Each airman must realize the importance of continuing his or her aviation education after certification in order to maintain an acceptable level of skill and to enhance knowledge of changing rules and airspace configurations.

(c) Finally, when all else fails, legal enforcement action can and must be used as a tool to achieve compliance. Legal enforcement action can range from civil penalties to suspension or revocation of airman privileges. Within this range of enforcement possibilities, the corrective action must be one that is suitable and appropriate for the occurrence.

*C. Mutual Goals.* Airmen and inspectors have the same goal: a *safe*, efficient airspace system. To achieve this goal, the airman uses such tools as aeronautical skills and knowledge tempered with reasonable care and good judgement. The FAA has many tools for the inspector to use as well: good communications, training, education, counselling, and, **as a last resort**, enforcement. In other words, the inspector must always be firm but also always fair.

**3. CULTURAL CHANGES.** To succeed in restoring the partnership between airmen and the FAA, both must undergo some cultural and attitudinal changes. By a positive change where needed in the culture and attitude of inspectors, FAA will go a long way toward a positive change in airmen.

*A. Recent Changes in FAA Enforcement Philosophy.* In response to concerns expressed by the aviation industry and from within FAA, the FAA Administrator announced a series of philosophical and policy changes for the FAA that have as their goal a cultural change in the way inspectors handle compliance issues. Following are some of the changes most pertinent to inspectors.

(1) The Administrator rescinded the mandatory 60-day suspension for unauthorized TCA penetrations. However, this does not alter the FAA's position that this type of occurrence is a potentially serious event. Rather, inspectors may now consider all facts and extenuating circumstances surrounding such an incident and may recommend sanctions accordingly. For example, the inspector may now recognize the different implications for safety between an inad-

vertent penetration of a TCA by an airman turning to attempt to avoid the TCA and the airman who willfully flies through the TCA because he or she considers it an infringement on personal rights.

(2) Inspectors may use a more flexible approach in the application of compliance procedures. The emphasis should be on the promotion of compliance through open communication and education.

(3) Inspectors are encouraged to use their personal and professional discretion and judgement in dealing with incidents of non-compliance. The inspector, with his or her professional skills and experience, is in the best position to consider all facts, circumstances, and mitigating factors. The inspector, furthermore, is the best person to analyze this information and exercise professional judgement in recommending an appropriate corrective action. A position of flexibility allows the inspector to recommend a corrective action that fits the nature of the issue.

(4) FAA will design and implement new training for inspectors that emphasizes better communications skills and interpersonal relations. Inspectors will be encouraged to approach airmen as peers who have a mutual interest and concern.

(5) The Sanction Guideline Table will be evaluated and changed to reflect a policy of rehabilitation rather than punishment. The Sanction Guide Table is designed to standardize the application of sanctions, but inspectors may deviate from the sanctions provided when it is appropriate and when the inspector can justify it with mitigating or even aggravating circumstances.

(6) FAA will establish procedures to remove information on violations from an airman's enforcement record after an appropriate time interval has passed and it is certain rehabilitation has been successful.

(7) In the enforcement process, it is absolutely essential that inspectors be open and honest with an airman about what will or can happen procedurally in an enforcement case.

*B. Rehabilitation.* Rehabilitation implies a restoration or a return to a former state. Rather than being a significant new change, the use of rehabilitation is actually a return to the way inspectors have dealt with certain acts of non-compliance that the inspector determined were not significantly unsafe.

(1) When an airman commits an inadvertent act of non-compliance, it is part of the inspector's role as an aviation safety professional to seek ways to restore the airman to an appropriate level of competence. Punitive action is a successful deterrent only in a narrow scope of behavior. Often it does not succeed at all in correcting behavior. The most successful method of rehabilitation is education. Once a receptive person fully understands what has happened, why it happened, and **how to prevent a recurrence**, rehabilitation is generally complete and compliance is usually assured.

(2) How does an inspector rehabilitate an airman who is in non-compliance? By accumulating and evaluating **all** information about an incident and using professional judgement in recommending counselling or remedial training for the offender. Either one or both of these options, accomplished appropriately, usually will restore the receptive airman to compliance. However, legal sanctions, accomplished when appropriate, also serve a rehabilitative function but not when they are used as a threat to impose compliance.

(3) If the FAA can achieve compliance through the use of training and education, **backed up by strong enforcement when necessary**, the public will see the obvious result--a safer airspace system.

**4. AIRMAN REMEDIAL TRAINING.** Automatic certificate actions or civil penalties in some instances may not be the most effective way of achieving compliance and assuring safety. Airmen involved in certain types of non-compliance may respond better to an educational experience rather than legal action. Compliance through education--remedial training (RT)--may also be a more equitable way for inspectors to deal with airmen.

*A. Definition.* Until recently, remedial had a negative connotation, based on an erroneous inference that those needing remedial assistance were not quite as smart as the average person. Actually, the definition of remedial includes the correction of faulty habits and the improvement of overall competence. The use of a remedial training program for airmen found in non-compliance would serve to identify faulty skills and correct them, then return to the airspace system an airman with increased competency. Contrast this with mandatory sanctions: At the end of a suspension period, the airman returned to the system unsure of why he or she had been singled out for punishment and, more importantly, without the essential knowledge of how to keep it from happening again. That

same airman with remedial training could return to the system with improved skills and knowledge and **with a positive attitude toward the assistance received from the FAA in encouraging that improvement.**

#### *B. Purpose.*

(1) The FAA RT program is intended to:

(a) Bring the incident to the attention of the airman involved in a positive manner so that the airman understands why an occurrence happened and why it is important that it does not recur.

(b) Encourage future compliance through improved skills and competence.

(c) Document corrective action and provide a source of information for agency use.

(2) In addition, the remedial training program serves the purpose of achieving future compliance of certificated airmen without the unnecessary imposition of certificate or civil penalty action.

*C. Eligibility.* Deliberate, willful violations, which involve gross negligence, recklessness, recidivism, or flagrant disregard of 14 CFR, shall continue to be handled by the imposition of strong, legal enforcement actions. This is clearly an area where remedial training is inappropriate and would be ineffective. The RT program applies to inadvertent violations of 14 CFR, and the inspector determines the inadvertency on a case-by-case basis grounded in the inspector's investigation of the facts and circumstances of the incident. The airman's past performance and attitude toward the incident are also important factors used in determining whether remedial training is appropriate.

(1) When assessing the airman's eligibility for the RT program, the inspector must determine if future compliance can, indeed, be assured solely through remedial training. For the inspector to consider the airman eligible for remedial training, the act of non-compliance must meet the following conditions:

(a) It cannot have been deliberate, e.g., repeated buzzing of a house as opposed to an inadvertent deviation from minimum safe altitudes because of unforecast weather.

(b) The non-compliance cannot have been the cause of an accident.

(c) The non-compliance cannot have actually compromised safety, i.e., created an condition that was significantly unsafe.

(d) The non-compliance cannot have indicated a lack of qualification, which would require re-examination, on the airman's part.

(e) The non-compliance cannot have been caused by gross negligence.

(f) The non-compliance cannot have been of a criminal nature.

(2) The airman must have exhibited a constructive attitude toward safety and his or her rehabilitation and must be deemed not likely to commit acts of non-compliance in the future.

(3) Furthermore, the inspector will review the airman's enforcement history and evaluate whether that history supports or precludes participation in the RT program. Ideally, candidates should be first-time "offenders;" however, previous enforcement history does not automatically exclude an airman from the program.

(4) Finally, airmen who were exercising the privileges of their certificates for compensation or hire in air transportation when the violation occurred are not eligible for remedial training. (Refer to FAA Order 8400.10, Air Transportation Operations Inspector's Handbook.)

*D. Remedial Training Process and the Inspector.* Although the procedures section of chapter 182, Conduct an Investigation to Determine Compliance, will include specific procedures for the operations inspector to follow when the RT program has been selected as the compliance option, the following information will explain the role of the inspector in the process.

(1) The investigating inspector, or any other FAA personnel, does not conduct the training. The investigating inspector, based on the facts of the case, recommends that the airman may be eligible for remedial training. The inspector makes this recommendation to the FSDO's Accident Prevention Specialist (APS) (or other qualified person designated at the discretion of the district office manager), who is then responsible for interviewing the airman and designing, implementing, and monitoring a program specific to the airman and the compliance issue.

(2) The airman must complete any agreed-upon RT program within 120 days of the FAA's becoming aware of the violation. Failure to complete the RT within the time specified results in termination of the

airman's participation in the program. The inspector then initiates legal enforcement action. Adverse weather conditions, unavailability of equipment, airman illness, etc., are conditions for extending the training period; however, the inspector must consider Title 49 of the Code of Federal Regulations, part 821, section 821.33, the NTSB's "stale complaint" rule.

(3) After the airman has completed the training program and provided evidence to that effect to the APS, the APS then indicates to the investigating inspector the successful completion of the training. Based on that information, the inspector issues a letter of correction to conclude the case and closes out the EIR.

(4) Once remedial training is begun, there must be a clear distinction between the investigating inspector and the APS. The APS must not be drawn into any aspect of the legal enforcement process, including discussion with the airman of the merits of the case.

(5) For a detailed description of the RT program and the role and responsibilities of the APS, consult FAA Order 8740.1, Aviation Safety Program Managers' Handbook, appendix 7.

*E. Remedial Training Sources.* For pilot airmen recommended training sources are as follows:

(1) Title 14 CFR part 141 schools - preferred because of their higher training standards and FAA certification.

(2) Other flight schools with adequate facilities.

(3) An appropriate Air Traffic Control facility, e.g., Operation Rain check.

(4) A Chief Flight Instructor or a Chief Ground Instructor at a flight school.

(5) A Designated Pilot Examiner.

(6) An appropriately rated flight instructor specifically qualified to give the instruction indicated by the airman's training program.

(7) An Aviation Medical Examiner.

(8) An Accident Prevention Counsellor.

(9) Military resources, e.g., physiological training.

(10) Other training resources as required.

**5. INVESTIGATIVE TECHNIQUES.** Order 2150.3, chapter 4, contains a detailed discussion of investigation, and those procedures shall be followed in addition to procedures in chapters 181 through 184 following. An overview of investigative techniques is included in the following paragraphs.

*A. Purpose of Investigations.* The sole purpose of conducting an investigation of an act of non-compliance is to develop the facts and gather evidence and circumstances of the incident in order to assure future compliance and justify rehabilitation but **not** to exact retribution. In other words, the inspector needs to gather all the information necessary to effect a “fix,” not a punishment. The inspector, once he or she learns of a possible act of non-compliance, must approach the investigation with rehabilitation foremost in mind.

(1) An investigation of a specific incident seeks to discover **what** exactly did occur based on concrete facts and substantiated evidence--not innuendo or even an airman's previous history if it is unrelated to the current investigation.

(2) An investigation uncovers **why** something occurred, the aggravating and mitigating circumstances which led to what was, at the time, an irreversible event. Through that discovery of circumstances and eventual analysis of them, the inspector can help to assure that compliance is restored.

(3) An investigation reveals the appropriate **role** of the FAA in the compliance process, and the most positive role the FAA can play is that of a rehabilitator. Of course, the investigation may reveal that the appropriate role for the FAA is to enforce legal action. However, the approach to the investigation should be that the facts and evidence support either conclusion--rehabilitation or enforcement sanction.

*B. Role of the Inspector.* In an investigation the inspector is the primary fact- and evidence-gatherer as well as the case's analyst. The disposition of the compliance issue depends on the inspector's judgment and aviation expertise.

(1) Because the investigation must support either a recommendation for rehabilitation or a recommendation for legal enforcement action, it is incumbent upon the inspector to gather all salient facts. However, the inspector should approach the fact-finding with an attitude aimed at rehabilitating the

airman, if at all possible, rather than with a presumption of punitive action.

(2) In the interest of continued aviation safety and or the success of the remedial training approach, the inspector's investigation must reveal all the evidence, including any mitigating circumstances. The deliberate omission of mitigating circumstances, especially if they would justify the rehabilitative approach, is unprofessional and unacceptable. If the inspector can find sufficient facts that indicate that remedial training is appropriate and likely to be successful in returning the airman to compliance, the inspector's choice is quite clear--opt to rehabilitate, not to punish.

(3) When seeking to rehabilitate an airman, inspectors should accept information from any source. Through later analysis the inspector can develop information which will support the inspector's recommendation.

(4) In developing information from witnesses and from the airman, the inspector must exercise his or her best interpersonal and communication skills. Information is freely provided when both communicators establish a barrier-free exchange. Verbal communication skills as well as listening skills are very important to assure that no essential item of information is overlooked.

*C. Active Listening.* Communication is a two-way process: speaking and listening. Much emphasis is placed on acquiring good speaking skills, especially for inspectors who have a great deal of public contact. Often, an emphasis on listening is left out, and listening is so crucial in assuring that the receiver of the communication gets the message accurately. Effective or active listening is not a pop psychologist's trick or a gimmick. It is a skill that comes from practice and from a genuine desire to know what the other person means.

(1) An inspector must gather information from many sources, but the predominant source is people. The inspector conducts personal interviews as part of an investigation, and this is often a source of a great deal of valuable information. For the information obtained in the interview to be valuable and accurate, the inspector must exercise effective listening skills. The first step toward effective listening is to stop talking.

(2) Witnesses, and especially the airman, may be nervous and apprehensive when faced with an interview with an FAA inspector. The inspector involved in

this sort of personal contact represents the FAA in a “frontline position,” and the inspector must accept and understand an interviewee’s natural apprehension. The inspector should assume **an attitude of quiet, active listening and helpfulness**. The inspector’s demeanor should be calm, restrained, and respectful. The witnesses and the airman should respond to this behavior by being calm and respectful themselves and willing to provide all necessary information.

(3) Most of all, the inspector must truly listen for what is actually said, not for what he or she wants to hear.

**6. ACQUISITION OF EVIDENCE.** During the course of an investigation, an inspector accumulates evidence from a variety of sources. As with fact-gathering during investigation, the evidence accumulated must be able to support either rehabilitation or enforcement action. For example, a pilot’s declaring an emergency in an appropriate situation is evidence of the pilot’s good judgement and attitude. Such evidence is to be considered as appropriate justification for the inspector to opt for rehabilitation rather than an assumption that the pilot is guilty of deliberate non-compliance.

*A. Types of Evidence.* Some of the most essential information comes from FAA’s various databases. This is objective, untainted evidence that can be easily substantiated. Other very important evidence comes from witnesses and the airman; however, this evidence, even that from witnesses, is subjective and can only be substantiated when compared with other evidence that corroborates it.

(1) Witnesses and the airman should be informed that the provision of evidence is not done under oath as in a court proceeding but that detailing the precise facts serves everybody’s best interests.

(2) Written statements, signed by the provider, generally are more desirable than an inspector’s notes of a witness interview. Recordings, which can later be turned into certified transcripts, are also highly desirable but must be made with the interviewee’s permission.

(3) The inspector should also remember that witnesses may be acquaintances or friends of the airman in non-compliance and that the evidence they provide will show the airman in the best possible light. The approach to take is one of complete acceptance without any indication to the witness of skepticism. The inspector can always discuss irrelevant material

that cannot be corroborated or conflicting information in the analysis section of the EIR.

*B. Interview Technique.* One of the best ways to obtain evidence from witnesses and airmen is through a one-on-one interview. The airman should be interviewed in private with just the investigating inspector present unless the airman specifically requests someone, i.e., legal assistance, to be present also. The inspector must honor this request and not attach any inferences of guilt to it. Witnesses should also be interviewed individually. This means that the inspector is more likely to obtain untainted information about what that person saw or heard. If Witness B is allowed to hear the information provided by Witness A, Witness B’s account may be prejudiced by what he or she has heard. That is, the evidence will not be as “pure” as when the interviews are conducted separately. When interviewing anyone--a witness and especially the airman in non-compliance--it is important to remember that the goal is to obtain information through a free exchange and not to interrogate.

(1) An interview means a meeting where the interviewer approaches the interviewee as a peer. The interviewee is encouraged to cooperate and allowed to relate observations or information without interruption or intimidation. An interview is usually conducted informally, with a voluntary answering of questions.

(2) Interrogation means formal questioning done by someone in a position of authority or power, such as a lawyer-witness confrontation in a court proceeding or a police officer questioning a suspect. Interrogation presumes non-cooperation and an adversarial relationship. The free giving of information is sublimated by the aim of eliciting a confession. In this situation, questioning is likely to be devious, shrewd, or clever with the intention of tricking, trapping, or antagonizing the interviewee to get information at any cost. The negative connotations are obvious.

(3) INSPECTORS SHALL USE THE **INTERVIEW** RATHER THAN THE INTERROGATION TECHNIQUE IN THE QUESTIONING OF WITNESSES OR AIRMEN IN NON-COMPLIANCE.

(4) Generally, when people are offered the opportunity to act as witnesses and assist in aviation safety by voluntarily giving a statement or account in an atmosphere of mutual respect and courtesy, most willingly provide information. Information given voluntarily by witnesses is generally untainted and could aid in the justification for the recommendation of a remedial approach.

## **Tips for Active Listening**

1. Stop talking.
2. Empathize with the other person.
3. Ask questions.
4. Be patient.
5. Concentrate on what the person is saying.
6. Show the other person that you want to listen and that you are listening.
7. Put the talker at ease.
8. Be aware of your emotions and prejudices.
9. Control your anger.
10. Get rid of distractions.
11. Get the speaker's main points.
12. React to ideas, not to the person.
13. Don't argue with the speaker mentally.
14. Listen for what is not said.
15. Listen to how something is said.
16. Don't antagonize the speaker.
17. Listen for the speaker's personality.
18. Avoid classifying the speaker prematurely.
19. Avoid jumping to conclusions.
20. Stop talking.

## How to Destroy an Interview or Lose a Witness

**WAIT.** No need to contact the witness now; give the witness time to forget.

**ARGUE.** Especially if the witness thinks he or she is smart.

**RUSH.** Don't take the time to get acquainted; let the witness know by your words and actions that you can't waste time talking to him or her.

**OVERREACT.** Be sure to convey your values and philosophy concerning the witness response.

**PHONE.** Just call and ask the witness to send a statement.

**BERATE.** Reprimand the witness; let the witness know how dumb he or she is.

**FRIGHTEN.** Use words like "confession," "stool pigeon," "thief," etc.; be sure to emphasize that the witness will have to go to court.

**BLUFF.** Tell the witness that he or she is obligated by law to answer your questions; demand to see the witness' records.

**USE LEGALESE.** Impress the witness with big, legal-sounding words.

**INTERROGATE.** Really press the witness for facts.

**BE FORMAL.** Keep the witness at a distance; never befriend a witness - the witness may want to communicate.

**INTERRUPT.** Don't let the witness finish replying; get on with it.

**ACCUSE.** Convince the witness that he or she has done something wrong or you wouldn't be there.

**BE IMPOLITE.** The bandit deserves it.

**BE RUDE.** The witness' thoughts and feelings mean nothing. Anybody is stupid if he or she doesn't under-

stand the question, so never rephrase it. Make the witness respond to what ever you ask.

**TALK.** Especially if the witness doesn't want to.

**DON'T REPLY.** After all, YOU are the Investigator.

**DON'T LISTEN.** Never admit you didn't understand what the witness said; the witness might think you're stupid.

**INTERVIEW IN A CROWD.** Especially if the witness is a hostile one; be sure everyone can hear.

**BE UNINTERESTED.** By all means, don't show any sympathy or empathy.

**CALL THE WITNESS A LIAR.** Any witness who says he or she doesn't remember is bound to be a liar.

**LET THE WITNESS CONTROL.** Let the witness pick the subjects and stray from the issues.

**SHOW SUSPICION.** Let the witness know that you know he or she is guilty from the start.

**WRITE QUICKLY.** Be sure your clipboard and pen are in hand as soon as the witness starts talking so you can get every word.

**ASK MULTIPLE QUESTIONS.** "When did you do it and why?" That should confuse the witness.

**BE DISORGANIZED.** Don't organize your objective beforehand; just ask questions at random; something useful will surely come of it.

**PROCRASTINATE.** Put it off until tomorrow. Don't set any priority on an interview; maybe it will go away.

**WAIT.** They'll forget, flee, lie, or die. They'll also get cooled off, told off, paid off, or laid off or otherwise be subjected to social, political, or economic pressures.



*C. Evidence and Remedial Training.* As mentioned above concerning investigative techniques, inspectors must approach the acquisition of evidence with the thought of rehabilitation in mind. In this light, development of the Items of Proof in the Enforcement Investigative Report will be different from what the inspector is accustomed to. Rather than listing Items of Proof that support a punitive sanction, when appropriate, the inspector should design the items to justify the option of remedial training.

**7. EIR APPRAISAL.** The inspector's appraisal of evidence gathered during an investigation of an act of non-compliance is reflected in a section of the Enforcement Investigative Report. Sections 2 through 5 contain detailed discussions about the preparation of an EIR. The following are some important points requiring emphasis.

*A. Section C, Items of Proof.* Order 2150.3 describes the physical format of the Items of Proof and shall be followed. Because of the misconception about mitigating circumstances, inspectors often omitted material that should have been included in Items of Proof.

(1) Items of Proof should support or refute the existence of an act of non-compliance, not attempt to justify the sanction.

(2) Before writing down the Items of Proof, the inspector should approach the process with the premise that rehabilitation is best but *only when it is appropriate*.

(3) Even though remedial training may be the recommended corrective action, the airman may not complete the remedial training or the inspector, after further analysis, may decide to conclude the case with legal action. The development of the Items of Proof, then, must be able to support either outcome, as per paragraph 6C.

*B. Section D, Facts and Analysis.* This section should be used by the inspector to justify a corrective action that goes outside the sanction guide table. Here an inspector can justify why the inspector believes a sanction should be less than what is indicated in the table or greater than what is indicated. Again, the inspector must approach this analysis armed with all possible information that can "prove the case." If the sanction the inspector recommends is outside the guidelines of the sanction table, there must be an

adequate explanation why this is the appropriate course.

(1) When describing mitigating circumstances, the inspector must thoroughly describe the extent to which those circumstances suggest that the occurrence may not have been actually unsafe. In other words, how do those circumstances offer a "fix" for the situation?

(2) The same holds true for aggravating circumstances. If an act of non-compliance is so deliberate, so willful, or created such a significantly unsafe condition, the inspector may recommend a sanction that exceeds what is suggested in the table. The description of the aggravating circumstances must be sufficient to support the sanction. In either case--describing mitigating or aggravating--the inspector must be objective and never vindictive.

*C. Citing of 14 CFR § 91.13 {91.9}.* In the past inspectors have included 14 CFR § 91.13 {91.9} in FAA Form 2150-5, section A, block 18 as a "catch-all" citation to preclude administrative action. The presumption has been that any act of non-compliance is careless or reckless without any consideration of mitigating circumstances.

(1) Because of mitigating circumstances, it is possible for an inspector to determine that an airman operated an aircraft in a careless manner which potentially endangered persons and property and also find that a significantly unsafe condition did not exist. For example, a minor controlled airspace incursion would potentially endanger others, but because of the absence of conflicting aircraft, an administrative action rather than a legal action may be more appropriate. When inspectors cited 14 CFR § 91.13 {91.9} they often relied on the circumstances of the occurrence or their analysis to support it. However, inspectors should state in their analyses (section D of the EIR) the basis upon which include 14 CFR sections are cited. Because of the perceived sensitivity of 14 CFR § 91.13 {91.9}, inspectors must, when citing a violation of 14 CFR § 91.13 {91.9} in conjunction with violations of other sections of 14 CFR, analyze **in a separate area of Section D** how the allegations support the finding that an airman acted in a careless or reckless manner.

(a) The inspector must specifically show **how** there was endangerment of persons and/or property.

(b) The inspector must also show **how** the inspector determined that the careless or reckless

operation created a condition that was significantly unsafe, i.e., did the condition pose an actual hazard rather than a potential one?

**8. SPECIAL EMPHASIS PROGRAMS.** It is the policy of the FAA generally to avoid instituting mandatory sanction programs. However, at times special situations arise which dictate the need for stepped up enforcement through increased sanctions to bring about compliance in certain areas where normal compliance programs, including remedial actions, are ineffective. Therefore, when necessary to reduce an elevated or critical incidence of non-compliance, special emphasis programs may be instituted on a national or local geographical basis. They will be instituted nationally by a joint determination of Flight Standards Service and the Office of the Chief Counsel. Regionally, the determination shall be made jointly by the Flight Standards division and Assistant Chief Counsel.

*A. Predetermined Sanctions.* Cases affected by these programs which raise initial enforcement actions to a predetermined sanction (e.g., 60-day certificate suspension for beach buzzing in a certain area of concern) will remain subject to later modification based upon presentation of mitigating factors or other extenuating circumstances.

*B. Use of Special Emphasis Programs.* Special emphasis programs may be used when it has been determined that the increased sanctions should bring about compliance, that the results are measurable, and that upon return to normal or non-critical status in the area of concern the programs will be discontinued.

*C. Publicity.* Before instituting a special emphasis program, adequate publicity regarding the program must be given through such means as letters to airmen, pilot forums, news media, etc. Also, a tracking method must be instituted to measure the ongoing results until termination of the program.

## SECTION 2. COMMON PROBLEMS WITH EIR PREPARATION

### 1. GENERAL.

*A. Advisory Information.* The material in sections 2 through 5 is informational and advisory only. Inspectors shall refer to the most recent edition of FAA Order 2150.3, chapter 9, for specific procedures on filling out FAA Form 2150-5.

*B. Philosophy.* Every inspector knows that a violation is not really proven until or unless it is adjudicated. Therefore, unless the inspector is absolutely certain that there is evidence to prove that a violation exists, the inspector should not allege that it does. To think or to report or to "play Monday morning quarterback" and say that someone is in violation of a 14 CFR is as easy as writing one's name. To know that a violation exists the inspector must be able to write a Summary of Facts of what that person did or did not do based on the wording of the rule. The inspector must also be sure that the inspector has the evidence to prove it.

**2. VOLUNTARY SELF DISCLOSURE PROGRAM.** The preliminary analysis of the Voluntary Disclosure Program as instituted in 1990, indicates that some changes in how the information is entered into the enforcement information subsystem (EIS) needs to be clarified. Also, there is a new requirement for adding a FIX CODE for the comprehensive fixes that are incorporated. The information that follows is the requested way to enter information into EIS for Voluntary Disclosure cases:

*A. Block 18 Regulations Believed Violated:* If more than one regulation is cited, list them in order of importance. The primary 14 CFR violated should be listed first.

*B. Fix Codes:* The new FIX CODES and their definitions are contained in figure 180-1. These codes should be entered in the first line of the "corrective action plan" block of the Self Disclosure Enforcement Investigative Report (EIR) Attachment. Again, enter the fixes in order of importance with the primary fix being entered first.

*C. Program Tracking and Reporting Subsystem (PTRS):* The changes that were incorporated in EIS for Voluntary Disclosure have eliminated the need for ACIEP to be entered in the National Use block of PTRS.

### 3. MISCELLANEOUS INFORMATION.

*A.* Follow up letters need not be sent to AFS-500. These are for your records to show that follow up action was accomplished on the comprehensive fixes.

*B.* Remember, when entering information in the Enforcement Investigative Report Attachment that any reference to the certificate holder should be deleted. Included in this would be a program name that would be unique to the certificate holder or the name of an inspector assigned to the certificate holder.

**4. THE PROBLEM.** Regional review of enforcement investigative reports (EIR) has revealed many discrepancies which could indicate a lack of inspector understanding of the 14 CFR and compliance program procedures.

*A. Transition.* The recent influx of large numbers of inspectors from industry and the military has presented a FAA a unique problem in transition. A person hired into the FAA from an industry position can go quickly from being responsible for compliance to being the "enforcer." Similarly, inspectors from military backgrounds find FAA's voluntary compliance concept is quite different from the military method. Sometimes, this is a difficult transition to make, and many inspectors require a period of time to adjust to their new enforcement roles.

*B. Regulation Phraseology and Compliance Procedures.* Title 14 CFR, with their complex legal phraseology, contributes to the difficulty the new inspector has with compliance job functions. Furthermore, the numerous, complex procedural requirements for investigating and reporting violations may have become stumbling blocks that hamper effective processing of compliance cases.

*C. Common EIR Errors.* The following are some common errors found in EIR's.

(1) Inclusion of related case numbers when cases were actually unrelated.

(2) Transmittal of related cases to the region separately.

(3) Omission of the full names of legal entities, including d/b/a's.

(4) Omission of Enforcement Information System (EIS) data on airmen or operators.

- (5) Citing regulations that are not enforceable.
- (6) Citing regulations that were not applicable to the operation.
- (7) Omission of applicable 14 CFR subsections.
- (8) Omission of cited regulations from the Summary of Facts or inclusion of regulations not cited in the Summary of Facts.
- (9) Not including a separate page on each 14 CFR violated in the Summary of Facts, when appropriate.
- (10) Preparation of a Summary of Facts that is too lengthy or which strays from the facts.
- (11) Not constructing the Summary of Facts around the wording of the regulation.
- (12) Not supporting the Summary of Facts with proving evidence.
- (13) Not identifying in the Summary of Facts who, what, when, where, why, and how, as appropriate.
- (14) Not arranging Items of Proof in a logical order.
- (15) Defacing of original Items of Proof and photographs.
- (16) Omission of photographs when they are needed as prime evidence.
- (17) Not including all evidence referenced in the file.
- (18) Omission of a statement signed by the inspector indicating that pertinent personal knowledge is omitted.
- (19) Not including all pertinent facts, circumstances, and exhibits in section D.
- (20) Not referencing supporting exhibit numbers in the Facts and Analysis.
- (21) Omission of facts in section D so that the case history is incomplete.
- (22) Omission of an analysis of how safety was affected.
- (23) Not considering the reliability of the evidence.

- (24) Omission of considerations concerning the airman's attitude, enforcement history, and economic and livelihood situations.
- (25) Not analyzing and evaluating conflicting evidence.
- (26) Ignoring mitigating and aggravating circumstances.
- (27) Ignoring the airman's statement of denial.
- (28) Ignoring the "stale complaint rule" on recommended suspension actions.
- (29) Taking unauthorized administrative actions.
- (30) Omission of material from the evidence that proves that the aircraft was operated or who was pilot-in-command.
- (31) Omission from the analysis of a conclusion and a recommendation for action and sanction.
- (32) Errors in dates, times, places, names, numbers, and signatures.

*D. Cause and Effect.* When supervisors, managers, or regional personnel seek corrections of EIR's, field inspectors have become disappointed and discouraged with the compliance program in general and with their supervisors and regional personnel in particular. However, when regional counsel is unable to take action because of insufficient evidence, inadequate reporting of facts, or incomplete analysis, regional personnel share the inspector's disappointment and discouragement. Reactions have been indignant and accusatory.

(1) There is cause and effect for every problem. The effects in this case have been cited above. Humans try to solve problems by attacking the effects of the problems without attention to the cause. The cause here seems to be some inadequacies in understanding and working with 14 CFR, and changing that situation goes a long way toward mitigating the effects.

(2) We have continually fought the effects of this problem by correcting errors as they occur. The objective of this section is to get to the cause of the problem and attempt to correct it. A better understanding of the regulations and procedures and of the inspector's duties and responsibilities should help us improve on work that is already exceptional.

(3) No one is perfect, and none of the laws inspectors work with are perfect. It helps to think of

ourselves as somewhat less than perfect, working with laws written by people as equally imperfect as we are.

*E. The Solution.* The primary thrust of the information that follows is to provide a background on how to analyze and work with 14 CFR and compliance procedures properly. It also provides a standardized format for preparing EIR's. The result should be higher quality reports prepared in less time. Conscientious use of the information that follows should result in successful processing of compliance cases. Each inspector must keep in mind the following during compliance investigations:

(1) Conducting a thorough, timely, and intelligent investigation or search for the truth.

(2) Inclusion of a knowledgeable analysis of the regulations believed to have been violated.

(3) Inclusion of a concise Summary of Facts of each violation based on the wording of the rule.

(4) Thoughtfully gathering and producing a logical listing of Items of Proof.

(5) Provision of a complete, factual case history, written in chronological order and based on all the facts and circumstances in the Items of Proof.

(6) Preparation of an expert evaluation and analysis of the facts, circumstances, and back-ground information, including the inspector's opinions, to fill gaps and help regional reviewers to understand what the appropriate actions and sanctions should be.

## 5. EIR RESPONSIBILITIES.

### *A. Inspector Responsibilities.*

(1) Inspectors are responsible for having the knowledge, skill, and ability to counsel and instruct the general public, the aviation public, and the aviation industry on the accepted methods of compliance with 14 CFR.

(2) Inspectors are also responsible for preventing violations of regulations whenever possible. One way to assure this is through the certification process where an inspector assures that airmen, air agencies, and air operators are in full compliance with 14 CFR before issuing any certificate, rating, or authorization.

(3) Inspectors also ensure that all applicable persons comply with the regulations on a continuing basis through a thorough and systematic surveillance program.

(4) If, during the performance of any of these duties, the inspector finds or becomes aware of any violation of 14 CFR, the inspector must investigate and report according to Order 2150.3.

*B. Discharging Compliance Responsibilities.* Inspectors must remember some very important issues when carrying out compliance responsibilities.

(1) Title 14 CFR are the minimum standards for aviation safety. Inspectors can and should encourage compliance with the highest possible standards; however, when it comes to enforcement, the inspector can only require compliance with the regulation, precisely as it is written.

(2) Regulations are sometimes permissive, sometimes restrictive. Restrictive regulations are enforceable; permissive regulations are not. If the regulation does not specifically say a person cannot, then a person can. This is not to say that either the stringent or lenient understanding of 14 CFR should always be followed. Rather, the FAA's compliance program shall not be used for a reprisal against those in the public who are uncooperative so long as they are in compliance. Neither is the FAA an instrument to enforce the "pet peeves" of an individual inspector or office. On the other hand, inspectors *shall not*:

(a) "Wink" at the enforcement of regulations they do not like or do not understand.

(b) "Shrug" at regulatory standards with which they do not agree or at the failure of "good guys" to comply.

(c) Have "double standards" for those who are friendly or hostile to "The Cause"--aviation safety.

(3) However, inspectors *shall*:

(a) Always be mindful of the difference in being nosy and investigating, and use the latter to establish guilt or innocence and to find both mitigating and aggravating circumstances.

(b) Be objective, i.e., report what he or she finds, both bad and good--the good in those whom the inspector finds offensive and the bad in those the inspector likes.

(c) Leave the final sanction to those who must decide it on a national or equalizing basis, but be sure to give those individuals the basis for sound decisions in the technical analysis.

(d) Include the inspector's feelings, opinions, and conjecture in the analysis, clearly separating them from the facts.

(e) Report what the inspector must instead of what the inspector wants; be detached and not emotionally involved.

(f) Take a positive, objective approach, not wasteful of diminishing resources, and always considering safety; keep in mind that proper regulation and promotion of the aviation industry are the same thing.

(g) Try to avoid emotional reporting. The inspector should always read what he or she wrote in aggravation after a “cooling off” period, and see if it still reflects a true and accurate picture of the event. Consultation with other inspectors and the supervisor can sometimes be very effective, provided the inspector is willing to take the advice given. If the inspector is unwilling to accept that advice, his or her investigatory and reporting problems are likely to multiply.

*C. Unit Supervisor and Reviewing Principal Inspector Responsibilities.* The compliance program is one of FAA’s most important programs and must be kept in its proper perspective. Immediate supervisors are responsible for assuring that their inspectors are trained and given proper guidance in the investigation and reporting of violations. They are also responsible for:

(1) Assigning the best qualified, available inspectors to investigate and report on violations.

(2) Tracking the investigation and reporting process to assure timely progression.

(3) Assisting inspectors during the investigation and reporting process by giving advice and counsel and by acting as “the devil’s advocate” to test the case for quality assurance.

(4) Carefully and thoroughly reviewing each EIR to be sure it is prepared in accordance with national and regional guidelines. The review shall include a reference to and an analysis of each 14 CFR cited in section B. This “look in the book” is absolutely essential to assure that a violation has indeed occurred and that there is evidence in the file to support all applicable elements of the rule.

*D. District Office Manager Responsibilities.* District office managers have overall responsibility for effectiveness and propriety of the compliance program in their districts. Among those responsibilities are the quality and timeliness of each investigation and its corresponding report.

(1) During the final district office review of the EIR the manager should, as a “double check,” compare each 14 CFR cited with the actual regulation. This assures the applicability of each and also that the evidence is available to support the case.

(2) When the manager finds the file to be acceptable but with something in it that may be questionable or may need clarification, the manager should consult with the appropriate unit supervisor. The manager should note the consultation on a “buck slip” or reminder memo and attach that to the file.

(3) The manager’s signature is the only one required on the report. The manager assumes full responsibility for the report when signing it.

*E. Flight Standards Division Responsibilities.* The Flight Standards Division in each region is responsible for reviewing all EIR’s to determine their adequacy and completeness. The division may:

(1) Accept the case as is and forward it to the Regional Counsel.

(2) Call the district office and ask for more information or evidence.

(3) Return the file for further investigation or rewrite or for downgrading to a “no action” or administrative report.

(4) Revise the report as necessary to provide the adequacy and completeness needed, including the addition or deletion of regulations believed violated and the changing of the recommended action and sanction, before forwarding it to the regional counsel.

*F. Regional Counsel Responsibilities.* The Regional Counsel reviews the case for sufficiency of evidence and appropriateness of sanction. If they find insufficient evidence or any other deficiencies in the report, they are supposed to coordinate any corrective action through the flight standards division. However, regional counsel may contact the reporting inspector to discuss the case and ask for clarification, availability of additional evidence, etc.

*G. “Ownership” of the Report.* Pride of authorship is natural, and all inspectors should take pride in the work they do. However, this feeling has been known to be so strong as to cause anger, frustration, and hard feelings between inspectors and supervisors, regional specialists, and regional counsel when the inspector disagrees with changes. It can be readily seen from the responsibilities listed above that each party concerned has his or her “day” with every report processed. Every

EIR should be considered a “One-FAA” report that is produced through a cooperative, coordinated, *team* effort.

(1) The unit supervisor may request changes or make changes in a report to assure that it complies with current guidelines. When it is accepted by the supervisor, the report becomes the unit’s report.

(2) The district office manager has every right to request changes or make changes in a report. For example, if the manager finds an inspector’s or a supervisor’s statement that could result in an embarrassment to the FAA, the manager may change or delete it. When the manager signs the report, it becomes a product of the district office. When it is a

quality report, everyone in the office should share in the pride of it.

(3) When the flight standards branch reviews the report and signs it, the report becomes a flight standards division report.

(4) When regional counsel prosecute the case, it becomes a completed FAA report. Regional counsel are the custodian of the report once they accept it. If anyone requests any information contained in the report after regional counsel accept it, he or she must go through regional counsel to obtain it.

(5) Inspectors should never become so emotionally attached to a report that they become extremely upset with anyone else for trying to make it a better report or for closing it out with no action.

**FIGURE 180-1**  
**VOLUNTARY DISCLOSURE FIX CODES**

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100---Program/Procedures

101--Technical: All technical programs/procedures that are either approved or accepted by the FAA.

102--Administrative: All company related manuals. (personnel policy, logistic support, ground fueling etc.)

103--Training: When a change to a required training program is made or a new training program is initiated.

104--Automation (software): When enhancements are made to existing computer programs or the addition of a computer program.

200--Equipment/Facilities

205--Automation (hardware): New computer system is added or existing equipment is repaired, or modified or the addition of more equipment to existing system. (Ground Based)

206--Test Equipment: Addition and or repair of NDI, Avionics, Aircraft system test box, etc.

207--Training: Adding simulators, training aids, audio visual equipment, etc. Modification of training facilities.

208--Aircraft: Used when the addition of A/C spare parts is the fix or fleet campaign, E.O.'s, E.A.'s, A/C modifications, etc., are used as part of a comprehensive fix.

209--Ground Equipment: Used for the addition or repair/modification of A/C stands, power units (electric, air, hydraulic) tools.

210--Housing: Used when there is a change to the facilities that flight and/or maintenance operations occupy or use.

300--Personnel

311--Organization: Used for changes and additions to staffing, structure, responsibilities, and authorization.

312--Action: Used for individual disciplinary action and transfers initiated by the company to correct the problem.

313--Training: Used when training is the fix such as remedial or additional training in a system or procedure is required.



**FIGURE 180-2**  
**SELF DISCLOSURE INSPECTOR/CLERICAL CHECKLIST**

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This checklist should remain with the Self Disclosure package until it is completed and should then be removed and discarded by the reporting inspector.

\_\_\_1. Upon verbal notification of self disclosure, complete the "FAA ACKNOWLEDGMENT OF RECEIPT OF CERTIFICATE HOLDERS INITIAL NOTIFICATION OF SELF DISCLOSURE" form. Send original to the certificate holder and keep one (1) copy for file.

NOTE: An extension to the 10 calendar day time limit referenced in item 1. above may be given if requested by the certificate holder. However, in accordance with advisory circular 120-56 or 145.xx, a detailed description of the comprehensive fix should be provided in writing to the principal inspector within 30 calendar days.

\_\_\_2. Determine, to the extent possible, that no FAA investigation is already underway.

\_\_\_3. Call AFS-540 for pseudo self disclosure (SD) number, phone 703-661-0333.

\_\_\_4. Log in Master SD log. For office (If kept).

\_\_\_5. Open appropriate administrative action PTRS entry in the computer.

\_\_\_6. If the proposed fix is acceptable, send a Letter of Correction to the certificate holder.

NOTE: Letter of Correction is to be signed by the principal inspector. In his absence, his designee will sign.

\_\_\_7. Complete 2150-5 in the computer and print out a copy for the file. The date of the Letter of Correction is the date of use for close out of the 2150-5.

\_\_\_8. Following issuance of the Letter of Correction, close the PTRS entry referenced in item 4. above. Closing date of the PTRS entry will be the date on the Letter of Correction.

\_\_\_9. Schedule the follow-up action required by guidance by opening a new PTRS record ID number with the appropriate call-up dates. This can be done by entering the appropriate PTRS activity number in the "Triggers" section of the PTRS entry referenced above. This will open a new record and tie both together in the software.

\_\_\_10. Make two copies of the SD package. Two complete copies will be sent to the region who will forward the one package to AFS-540. The original will be marked "CONFIDENTIAL NOT DISCLOSABLE" and will become the Office Copy.

Each copy shall include:

- FAA form 2150-5
- Inspectors Summary of Facts (Section B)
- The "FAA Acknowledgment of Receipt of Certificate Holder's Initial Notification of Self Disclosure" form
- Certificate holder's written report
- Copy of Letter of Correction

REPORT NUMBER \_\_\_\_\_ RELATED NUMBER \_\_\_\_\_

SELF DISCLOSURE Y SD IDENTITY CODE > \_\_\_\_

6. CERTIFICATE TYPE > \_\_\_\_

EQUIPMENT TYPE > \_\_\_\_ 9. MODEL AIRCRAFT \_\_\_\_\_

13. DATE OCCURRED / / 14. TIME \_\_\_\_\_

15. DATE KNOWN TO FAA / /

18. REGULATIONS VIOLATED (primary first)

1. \_\_\_\_\_, 2. \_\_\_\_\_, 3. \_\_\_\_\_, 4. \_\_\_\_\_

19. TYPE \_\_\_\_\_ 20. SUB-TYPE \_\_\_\_\_

21. CATEGORY \_\_\_\_\_ 23 ACCIDENT ASSOCIATED \_\_\_\_\_

DATE FAA ACCEPTED PLAN / / (DATE OF LETTER OF CORRECTION)

PROBLEM CODE \_\_\_\_\_

FIX CODE 1. \_\_\_\_\_, 2. \_\_\_\_\_, 3. \_\_\_\_\_, 4. \_\_\_\_\_

(List primary first)

CORRECTIVE ACTION PLAN (1200 Characters maximum)

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\_\_\_\_\_

25. TYPE ACTION > \_\_\_\_ 26. SANCTION > \_\_\_\_\_

27. DATE > / / (Date 2150 is printed)

**FIGURE 180-4**  
**FAA ACKNOWLEDGMENT OF RECEIPT OF CERTIFICATE HOLDER'S INITIAL**  
**NOTIFICATION OF SELF DISCLOSURE**

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I, \_\_\_\_\_ of the Kansas City Flight Standards District Office hereby acknowledge receipt of the verbal report stating that a violation of Federal Aviation Regulations may have occurred on aircraft N \_\_\_\_\_ (involving) \_\_\_\_\_

The referenced finding was immediately disclosed to me on

(Date) \_\_\_\_\_ at (Time local) \_\_\_\_\_ by the

Following Company official:

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

PHONE: \_\_\_\_\_

AT THAT TIME, THE ABOVE NAMED COMPANY OFFICIAL ADVISED ME OF THE IMMEDIATE STEPS TAKEN TO CEASE THE CONDUCT THAT RESULTED IN THE APPARENT VIOLATION AND STATED THAT AN INVESTIGATION IS UNDERWAY TO DETERMINE WHAT REMEDIAL ACTIONS MAY BE NECESSARY TO PREVENT A RECURRENCE OF THE FINDING.

In accordance with Advisory Circular 120-56/145-XX, this acknowledgment will serve in lieu of a letter of investigation. However, should we discover prior to receipt of your written report, that the apparent violation was already under investigation by the FAA, we will notify you and proceed with that investigation and this self disclosure will be denied. We expect your complete written report of this incident including a detailed description of the proposed comprehensive fix outlining the planned corrective steps within 10 calendar days of this Initial Notification.

I have assigned the following inspector to assist in verifying the facts associated with the finding and in preparing the appropriate investigative package:

NAME: \_\_\_\_\_

FAA OFFICE: \_\_\_\_\_

PHONE: \_\_\_\_\_

PRINCIPAL INSPECTOR: \_\_\_\_\_

FAA OFFICE: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

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## SECTION 3. GENERAL INFORMATION AND BACKGROUND ON EVIDENCE

**1. GENERAL.** Evidence includes all the means by which any alleged fact, the truth of which is determined by investigation, is established or disproved. As it relates to FAA legal enforcement action, evidence is the means by which inspectors prove or establish the facts set forth in legal notices, civil penalty letters, etc.

*A. The Law of Evidence.* The law of evidence is quite complex, and regional counsel have the primary responsibility for determining acceptability of evidence. However, the inspector must have a general understanding of the requirements imposed by the law of evidence. All too often, evidence that was available at the time of the initial investigation is not always available several months later. Thus, a failure of the inspector to recognize a lack of acceptable evidence in the report may well prove ruinous to the case. The following information should provide a basic understanding of the law of evidence.

(1) The law of evidence is a body of rules which excludes from consideration (by a judge, jury, or hearing examiner) certain kinds of evidence.

(2) Evidence which is deemed to be misleading, unrelated, or unimportant is not considered when adjudging the case. In other words, certain types of evidence have been determined to be untrustworthy or so remote in likelihood as to be not admissible, i.e., worthy of consideration.

*B. Admissible Evidence.* In general, evidence is admissible only if it is **all** of the following:

(1) *Relevant*, i.e., logically related to an issue in the case.

(2) *Material*, i.e., importantly related to an issue in the case.

(3) *Competent*, i.e., of a generally reliable nature.

*C. Purpose of Evidence.* FAA must have acceptable evidence in support of all alleged facts in order to take legal enforcement action.

## 2. EVIDENCE.

*A. Forms of Evidence.* Evidence may be properly presented in any combination of the following forms. The investigation report will, of course, only include the latter two forms

(1) *Testimonial evidence* is information provided by witness testimony while the witness is under oath.

(2) *Documentary evidence* consists of written information of any kind.

(3) *Real evidence* consists of physical items or objects which are presented for examination and inspection.

### *B. Kinds of Evidence.*

(1) *Direct evidence* tends to establish one or more of the principal facts at issue without the need to refer to evidence of any other fact. It is generally considered in terms of any eyewitness who has actual knowledge of a fact at issue by means of the witness' senses. For example, suppose a case in which the landing gear of an aircraft collapsed during landing roll-out, and the inspector is attempting to determine if the pilot is at fault. The testimony of the co-pilot that the pilot inadvertently raised the gear handle would be direct evidence.

(2) *Circumstantial evidence* consists of collateral facts, that is, a fact other than the fact at issue. The fact at issue may be inferred from the collateral fact alone or with other collateral facts. To continue the landing gear example, evidence that the landing gear system was in perfect operating condition just before the incident or that nothing in the wreckage suggested equipment failure would be circumstantial evidence of the pilot's culpability. The inspector can infer that a mechanical malfunction is not a possible cause of the incident and, therefore, that the gear must have come up because of action of the pilot.

(a) Circumstantial evidence may be extremely useful in explaining, corroborating, and evaluating direct evidence. Indeed, inspectors use it all the time. When the inspector is faced with a conflict between two witnesses and accepts one version of the incident rather than another, the inspector bases that judgement on the surrounding circumstances. For example, the inspector may conclude any of the following:

i. That a witness is not to be believed because that witness described an aircraft performing a maneuver which is physically impossible.

ii. That the witness had no real opportunity from the witness' physical location to observe the facts the witness has related.

iii. That real evidence indicates that the witness is in error.

(b) Inspectors must remember that whenever circumstantial evidence affects the investigation or evaluation of the direct evidence in a case, the circumstantial evidence shall be included in the report. As a rule of thumb, the inspector should consider whether any fair-minded person could disagree with the inspector's interpretation of the facts. If so, the inspector should look for any additional evidence--perhaps circumstantial--which might foreclose that possibility.

(c) The lack of eyewitnesses to a particular violation should not necessarily eliminate the possibility of establishing the violation by acceptable evidence. Many successful cases, particularly in the area of violations of 14 CFR part 43, are based entirely on circumstantial evidence. However, the inspector must use a lot of imagination and hard work when using inferences to establish a violation.

(3) There is no important difference between admissibility of these kinds of evidence. For the most part, the same rules of exclusion apply to both. The distinction between direct and circumstantial evidence is mentioned here primarily to alert the inspector to the value of evidence other than that directly concerned with the facts at issue.

**3. THE RULES OF EXCLUSION AND HEARSAY.** The general rule is that in order for evidence to be admissible, it must be relevant, material, and competent. Of the various exclusionary rules, the one most frequently encountered, and most difficult to understand, is the rule against **hearsay evidence**.

*A. Hearsay.* Hearsay evidence is defined as any statement made out of the presence of the court or hearing which is offered to prove the truth of its contents. For example, a witness testifies that his daughter saw an aircraft fly 50 feet over his house. If this testimony is offered to prove the truth of the daughter's statement (that the aircraft did fly that low over the house), then the testimony is hearsay.

(1) Hearsay can be thought of in terms of the testimony of an observer to events versus the testimony of a non-observer. If a non-observer's testimony

is given as a statement made to the non-observer by the observer, then the testimony will most likely be considered hearsay.

(2) As a general rule, hearsay is not considered to be competent evidence and, therefore, is not admissible to prove a fact. The reason for this rule is that there is no real opportunity for the other side to cross-examine the witness. Thus, the non observer would only be able to testify as to what the observer told the non-observer. In such a case, the capacity and memory of the person who actually observed the event cannot be tested by cross-examination.

*B. Exceptions to the Hearsay Rule.* There are a number of important exceptions where hearsay evidence is admissible. These are situations where the law considers that there is a special guarantee of trustworthiness even though there would be a lack of opportunity to cross-examine. Principal among these exceptions are the following:

(1) One exception is **when hearsay is considered original evidence**, i.e., any statement made out of the presence of the court or hearing which is offered in evidence for some relevant purpose other than to provide the truth of its contents. For example, a witness testifies that a mechanic told an owner of an aircraft that the annual inspection was overdue. If offered to prove that the inspection was overdue, then the testimony would be hearsay. However, if offered to prove merely that the statement was made to the owner, then the testimony would be original evidence.

(2) Another exception is admissions. Where the observer is the party in the case, of course, there is no reason to apply the rule of cross-examination, since one cannot claim the right to cross-examine oneself. For example, in an enforcement action against a pilot, the pilot is usually both an observer and a party. If the pilot relates facts about the incident to a bystander, the pilot cannot later complain that the bystander's testimony is hearsay. Hence, the bystander will be allowed to testify as to what the pilot said. Because of this rule, it is important that the inspector determine if the suspected violator has made any statements to others concerning the event. Statements so made can be an important part of the report.

(3) One more exception is **declaration against interest**. The right to cross-examine the actual observer may also be dispensed with when the observer is unavailable at the time of trial and where the statement the actual observer made to the

bystander is in some way detrimental to the actual observer's own interest. Under these circumstances, the bystander can testify to the facts related by the observer. For example, two aircraft nearly collide and enforcement action is taken against pilot A. If pilot B had remarked to a bystander that pilot B had deliberately left the assigned altitude to buzz pilot A, the bystander could testify to this conversation in A's trial, IF pilot B were unavailable to testify. This exception to the hearsay rule derives from the notion that pilot B's statement, being self-incriminating, is not likely to be a fabrication. It, therefore, has a certain degree of reliability.

(4) The last exception is **Res Gestae**. This principle covers the situation where the observer's statement to the bystander is a spontaneous declaration made during the excitement of some dramatic event. For example, a passenger emerges from airplane wreckage and tells a bystander that a fire started in the number two engine. The bystander can testify to this statement at the hearing, on the theory that the passenger (observer) was swept up in a dramatic event and did not have time to fabricate the story. This indication of reliability, as in the declaration against interest, makes up to a degree for the lack of cross-examination of the observer. Inspectors should be on the lookout for bystanders who may have overheard spontaneous statements made by people directly involved in an occurrence.

*C. Written Statements and Hearsay.* Since most written statements are made out of the presence of the court, it follows that they are hearsay if offered to prove the truth of their contents. Of course, it is impossible to cross-examine a piece of paper. The apparent impact of this is quite significant.

(1) The following documents are all hearsay:

- (a) An official weather report.
- (b) Agency maintenance records.
- (c) Company records and logs.
- (d) Investigator's reports.
- (e) Written statements of eyewitnesses.
- (f) Air traffic records.
- (g) Flight Progress Strips
- (h) flight plans.

(2) While the person who actually made the observation recorded in these documents could appear

and testify at a trial, the records themselves are not admissible unless they fall within an exception to the hearsay rule. Fortunately, many of these documents do fall within the exceptions to the hearsay rule discussed above. For example, a written statement of an observer may constitute a declaration against interest or an admission, in which case it would be admissible.

(3) There are two further exceptions to the hearsay rule that also allow written accounts of an observer to be admissible.

(a) One is an exception for *business entries*. Even though the person who actually observed the events recorded in documents of this kind is not present for cross-examination, the documents are admissible by virtue of the following statute:

"Any writing or record . . . made as a memorandum . . . of any act, transaction, occurrence, or event, shall be admissible . . . if made in the regular course of business . . ."  
 ."(28 U.S.C. 1732)

i. Not every business record qualifies for admission: only those made "in the regular course of business," i.e., only those which are usually and customarily kept.

ii. The statute is apparently limited to documents containing statements of fact as distinguished from documents containing opinions.

iii. Such a record must be authenticated, i.e., shown to be an actual record of the business. This is usually done by the testimony of the company official who has general charge of making and keeping similar records. The inspector's copy of a carrier's record with the inspector's certification of the record as a true copy attached is useful if no one disputes the contents of the record. If a dispute arises, however, the inspector's testimony or the testimony of the company official who has custody of the records may be required to authenticate the document.

(b) The other exception is *official records*. Another section of 28 U.S.C. provides that -- ". . . books or records . . . of any department or agency of the United States shall be admissible to prove the act, transaction, or occurrence as a memorandum of which the same were made or kept." (28 U.S.C. 1733)

i. Similar qualifications need to be added here regarding records of "opinions." For example, the evaluative conclusions embodied in the inspector's report would not be admissible under this statute.

ii. Official records must also be authenticated the same as business records.

(c) Government records are authenticated by either of the following:

i. An official publication of the document.

ii. A copy of record witnessed by its legal custodian and accompanied by a certificate from an official having a seal of office to establish that the witness is the legal custodian. For example, a copy of a flight progress strip would be properly authenticated when signed by the Tower Manager, the legal custodian, and accompanied by a certificate of the Administrator that the signer is the Tower Manager and is legal custodian of the document.

*D. Admission of Hearsay Evidence under Exceptions.* A hearsay account may be admissible under one of the exceptions indicated above and may be properly identified and authenticated and may still be completely false. What has been established here is that in holding it admissible, there is sufficient probability of its accuracy so that the judge might receive and consider it. The judge may, after comparing it with other evidence, conclude that it is, in fact, inaccurate. The hearsay rule merely prevents the judge from wasting time considering evidence whose reliability is conjectural.

*E. Cases Involving Certificate Action.* Regarding cases involving certificate action, there is, as a practical matter, an additional exception to the hearsay rule. In an NTSB hearing, hearsay evidence is considered admissible with the condition that the weight to be given such evidence rests within the judgement and discretion of the hearing examiner. In practice, the hearing examiners generally give only limited weight to such evidence and in some instances have considered certain hearsay so worthless as to give it no real weight at all. As such, inspectors should not rely solely on hearsay to establish a particular fact. However, hearsay is frequently useful to substantiate other admissible evidence.

*F. Hearsay Rule and the Inspector.* The inspector is not expected and not really required to possess an extensive or detailed knowledge of the hearsay rule. However, the inspector needs some general understanding of it. As indicated above, there can be varying degrees of hearsay.

(1) In the case of a written statement by an observer, the attorney can solve the hearsay problem merely by calling the observer to testify as a witness at a hearing. This becomes more difficult as time goes on: It is harder to locate the observer and harder for the observer to remember the event. However, in the case of a written statement by a non-observer, calling the non-observer as a witness would not suffice. A written statement by a non observer is actually hearsay on hearsay and is particularly objectionable.

(2) The inspector should be able to recognize this type of hearsay problem and obtain the missing evidence at the time of the initial investigation. The inspector should also put special emphasis on obtaining those types of evidence that would generally be admissible. An example of this would be admissions of the pilot.

(3) The inspector should ensure that he or she obtains a complete statement from a possible violator whenever this individual is willing to make a statement.

(4) Finally, the admissibility and value of hearsay evidence depends in large measure on the use for which it is offered at the trial. The same evidence may be admissible if offered for one purpose and not admissible for another. Since this cannot be finally determined until the trial, hearsay evidence should be included in the investigation file so it will be available for evaluation and possible use by the regional counsel. However, the inspector should be aware of its limitations and should avoid submitting an investigation where the only evidence to establish a fact is hearsay.

*G. Other Evidentiary Uses of Written Statements.* Quite apart from the hearsay rule, a written account of an observer may be useful and even admissible in the hearing in other ways. Any written account of an observation which is offered to prove the facts observed is hearsay. However, if a written account is offered for another reason, it may be admissible even though it does not qualify under one of the exceptions to the hearsay rule.

(1) The written statement an inspector takes from an observer cannot be used at the trial in place of the observer since it is hearsay. However, if the observer does appear at the trial and changes the story on the witness stand, the written statement may be admitted to impeach the witness.



(a) The statement does not come in as evidence of the facts related, since it is unknown which statement is true. It can, however, come in to cast doubt on the witness' honesty. This is the basic reason why inspectors take written statements from eyewitnesses. It reduces the danger of surprises from unexpected testimony at a hearing. It is reasonably sure that a witness who has given a written statement will stay close to it in testimony. If the witness does not, the witness can be discredited.

(b) For impeachment purposes the statement need not necessarily have been signed. However, the inspector should attempt to get it signed since that greatly simplifies proving its authenticity. If the witness refuses to sign it, the inspector should ask the witness if it is a true statement and record the affirmative answer on the statement. The inspector should then sign the statement and date it, e.g., "The account recorded above was reported to me by [name of witness], who read it and stated that it was a true account but who declined to sign it. [Inspector's name, signature, and district office and the date]"

(2) Another use of a written account, other than to prove the truth of the facts stated, is in refreshing the recollection of a witness. The statement from an observer may be useful to the observer on the witness stand to refresh memory of the event.

(a) In some cases it may be admitted in place of the testimony if the witness is totally unable to recall the matter. The witness is, of course, still available for cross-examination.

(b) This device is also available to inspectors when they are witnesses. A careful collection of the inspector's own memoranda, notes, and reports may be extremely useful in refreshing recollection of past events, either in preparation for trial or on the witness stand.

*H. Use of Physical Evidence.* When introducing physical evidence (such as a piece of an aircraft), the cross-examination problem is not a factor. Rather, the two principal problems are showing that the item is **authentic** (i.e., what it is purported to be) and showing that its **condition has not changed** since the date of the incident.

(1) The problem of authenticity is solved by properly identifying the item. The inspector should note any existing features or characteristics which would help in identification. For example, if a wrench has a gouge two inches from its tip or if there is a particular color to the item, the inspector should note these special characteristics in detail so that the items can be identified later. In addition the item may be marked in such a way so as not to deface or alter the item, i.e., tagging it.

(2) Establishing that an item is unchanged can be accomplished by taking steps to ensure that it remains in its original condition until the time of trial. Locking up the item and maintaining continuous, exclusive possession of it is one method. Another is to establish a chain of custody in order to be able to account for the item's whereabouts at all times. Used separately or jointly these two methods should permit the attorney to establish that the item is authentic and unchanged.

(3) Photographs are freely admissible where relevant. They may be used to illustrate the testimony of a witness or as evidence themselves. Photographs are particularly effective in certain instances, i.e., to show that a particular area is a congested residential area or to show the unsatisfactory condition of a large item such as an aircraft wing.

(a) Before a photograph is admissible, it must be shown that the picture is a fair representation of what it purports to depict. This is done by the testimony of someone who has seen the object which was photographed and who can thus compare the photograph with it.

(b) To guard against an argument as to the authenticity of the photograph, the inspector should always note on the back of the photograph the photographer's name and the time and place the picture was taken. The inspector should also retain the negative, if possible.

(c) Photographs should be taken as soon after the occurrence as is possible. A photograph of an area or item loses some of its impact if taken five or six months later. Seasonal changes or construction can make an area look different.

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## SECTION 4. PREPARATION OF FAA FORM 2150-5, ENFORCEMENT INVESTIGATIVE REPORT

**1. GENERAL.** Section 1 included a discussion of the Summary of Facts and Items of Proof portions of FAA Form 2150-5 and special considerations related to them. In keeping with the procedural format of Order 8700.1, the inspector should consider the following information as Background to the Procedures found in Order 2150.3, chapter 9, for filling out FAA Form 2150-5. The information contained in this section sets forth policies and guidelines which have been developed through experience over the years to improve the timeliness and quality of EIR's.

### 2. DETERMINING THE REGULATION BELIEVED VIOLATED.

*A. Knowledge and Ability Required.* To be certain the correct regulation is cited and to assist in writing a concise and accurate Summary of Facts, the investigating/reporting inspector must be knowledgeable of pertinent sections of Title 19 of the United States Code (49 U.S.C.) and 14 CFR and must know how to read and analyze those regulations properly.

*B. Analysis.* The first step in analyzing what regulations may have been violated is to determine which sections of 49 U.S.C. and which parts of 14 CFR apply. Generally speaking, the regulations violated are either applicable to airmen, aircraft, and/or operations.

(1) The inspector can find the pertinent sections in 49 U.S.C. applicable to compliance in Titles V and VI. Although there are other sections which lend themselves to being cited as violations of 49 U.S.C., section 610 is the one most generally cited because it covers most situations. If the violation is not covered in section 610, the inspector should refer to 49 U.S.C., Table of Contents and look for an appropriate section.

(2) The inspector should refer to a listing of 49 U.S.C. to determine which sub chapters and parts of the 14 CFR apply.

(3) The inspector needs to determine first the general applicability of the subpart of 14 CFR. To cite a particular section of a 14 CFR without checking the applicability of the subpart under which it is located is likely to result in wasted time and effort.

(a) For example, 14 CFR § 91.401(b) {91.161} states that certain other sections of this subpart do not apply to an aircraft maintained in accordance with a continuous airworthiness

maintenance program approved under 14 CFR part 121 or 127 or 14 CFR § 135.411. Many inspectors have attempted to cite 14 CFR § 91.405 {91.165}, located just across the page from 14 CFR § 91.401 {91.161}, on 14 CFR part 121 or 135 operators when 14 CFR § 91.405 {91.165} is not applicable to them.

(b) Some sections of 14 CFR may appear to be applicable in the subpart applicability statement when, in fact, there may be other parts which apply more directly and should be cited. The particular regulation for the particular type of operation should be cited. For example, 14 CFR §§ 91.7 {91.29}, 121.153(a)(2), and 135.25(a)(2) all pertain to operation of aircraft in an unairworthy condition. 14 CFR § 91.7 {91.29} should be cited on a general aviation operation, 14 CFR § 121.153 on an air carrier, and 14 CFR § 135.25 on an air taxi operation. 14 CFR § 91.7 {91.29} could be cited on a 14 CFR part 121 or 135 operation, but there is no reason to do so since sections with those parts address the situation.

*C. Determining Enforceability.* Inspectors must carefully analyze sections and subsections of 14 CFR to determine their enforceability. About half of all 14 CFR is not enforceable because they either confer authority or responsibility or are definitive or explanatory in nature. To be enforceable the rule must contain mandatory or prohibitory language. (When used alone “may” is *permissive* and is used to state authority or permission.)

(1) The words “shall” and “must” appear in *mandatory* language.

(2) “No person may” and “a person may not” are examples of *prohibitory* language.

(3) There are six general types of regulations. Prohibitive and mandatory, as mentioned above, are easily discernible. However, the others require a little more in depth analysis. Look out for the following types and their associated phrases.

(a) Regulations may contain *conditionally prohibitive* language, such as “no person may except” or “no person may unless.”

(b) Regulations may contain *conditionally mandatory* phraseology, such as “each person shall except” or “however.”

(c) Regulations that confer *authority or responsibility*, such as “the aircraft owner is responsible,” cannot be violated no matter how much the inspector might think it is.

(d) Regulations that *define or explain*, such as “this part prescribes” or “each of the follow requires,” appear to be compulsory but are not mandatory or prohibitive.

*D. Reading and Analyzing the Regulation.* Inspectors must be able to take a regulation apart and analyze it in relation to the alleged violation to determine for certain that it has been violated. The inspector needs to answer some important questions before citing a particular section or subsection.

(1) To *whom* does the regulation apply?

(2) *What* does it say in its entirety? (In other words, inspectors must not read sentences or phrases out of context.)

(3) *Where* must it be complied with?

(4) *When* must it be accomplished?

(5) *How* does it apply in this occurrence?

(6) Are there any special conditions?

(7) Are there *exceptions or exclusions*?

(8) Does this regulation *clearly* apply?

(9) Are there any *other regulations* needed for support?

#### *E. Elements of Regulations Which Must be Proven.*

(1) All regulations have specific elements or component words that convey important information. These elements must be proven in order to show non-compliance.

(2) Inspectors must identify the elements and answer the **what, where, when, why, how, and who** questions before saying with certainty that there is a violation. Using 14 CFR § 91.13 {91.9} for an example, this is how the rule is broken down into its elements. Title 14 CFR § 91.13 {91.9} states that “No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”

(a) *Person* - *Who* was pilot-in-command or the person responsible?

(b) *Operate* - *What, where, when, and how* did the person operate.

(c) *Aircraft* - *What* make, model, and N-number was the aircraft?

(d) *Careless or reckless manner* - *Which* was it? *What* was it? *How* was it careless or reckless?

(e) *Endanger* - *What* was the endangerment? *How* did it endanger? *Why* is it considered endangerment? *Who* was endangered? Was it actual, potential, or inherent?

(f) *Life or property* - *Whose* and *What*?

(g) *Another* - *Who* besides the pilot?

*F. Enforcement of Other Referenced Documents.* Occasionally, because of the scope and detail involved, other documents besides regulations are incorporated by reference. The legal effect is to require compliance with those documents; however, the 14 CFR have been violated--not the reference. For example:

(1) Title 14 CFR § 43.15(c) requires the use of a checklist while performing inspections. It states that the checklist must include the scope and detail of the items contained in 14 CFR part 43, appendix D, and 14 CFR § 43.15(b). Although appendix D must be complied with, 14 CFR § 43.15(c) is the regulation cited if it has not been complied with. If the aircraft being inspected is a rotor craft, the checklist must also contain the items in 14 CFR § 43.15(b), which is a supporting regulation and not the one violated.

(2) Other regulations require the use of manuals, advisory circulars, service bulletins, specifications, airworthiness directives, etc. Although a person may be required to use these documents, it is the regulation which requires their use that must be cited for a violation and not the referenced documents.

(3) The referenced documents in this type of situation become primary Items of Proof that must be referenced in the Summary of Facts and elaborated on in the Facts and Analysis.

*G. Title 49 U.S.C., Section 609.* Title 49 U.S.C., section 609 is actually impossible to violate, but on the basis of section 609, the FAA can reinspect or reexamine and, when necessary, amend, suspend, or revoke a certificate. If, upon request for a reinspection or reexamination, a person refuses to allow it or if the person fails the retest, an EIR must be prepared. sections B, C, and D need not be completed, but the need or justification for the reexamination must be

documented. This may be an accident report, incident report, complaints from industry, and/or a statement by the inspector of the inspector's own personal knowledge of the person's suspected or known incompetency. The inspector must also document the reluctance or refusal to submit, as well as the request for reexamination sent to the individual.

*H. Intent of the Regulation.* The preamble of the regulation may be of some help in determining the intent of the rule, but enforcement action can only be taken on what the rule actually says. It may be helpful to include a copy of the pertinent preamble in the Items of Proof and discuss the intent of the rule in the Facts and Analysis in Section D.

*I. Intent of the Alleged Violator.* It is very difficult, if not impossible, to prove intent. The inspector cannot normally file a violation on intent, only on the actual occurrence of a violation. The only exception to this is when the word "intent" is contained in the wording of an enforceable rule. The inspector may, however, base a recommendation for specific action and sanction on intent and may ask Regional Counsel to prepare injunctions on evidence of intent to prevent violations.

*J. Preponderance of Evidence.* The FAA must have more evidence that a violation did occur than it has that it did not occur before processing a case. One witness statement, even of an inspector or policeman, does not outweigh an alleged violator's statement that he or she was not in violation. Unless the inspector has other proving or circumstantial evidence to back up the word of the inspector, the inspector may as well close it out with "no action" because of insufficient evidence.

### 3. SECTION A.

*A. Use of Section A.* Section A is the only part of the EIR that must be used with every report, regardless of the type of action or sanction. This includes closing the case with no action at all. The Enforcement Information Subsystem (EIS) computer format should be used in lieu of FAA Form 2150-5, but since the computer format contains the same information as the form, the following information still applies.

#### *B. Contents of Section A.*

(1) The inspector enters a Related Report Number only when there is another violation by another person and that violation was part of the same occurrence. For example, a violation of 14 CFR § 135.265(a), "Flight time limitations and rest require-

ments: Scheduled operations," applies to both the certificate holder and the flight crewmembers. Therefore, both would be in violation of the same rule at the same time.

(a) When one incident involves more than one person or involves a carrier and an employee, the inspector prepares a master file and one or more companion files. Items of Proof common to all related files need to be included only in the original copy of the master file. The Items of Proof index for the companion files needs to list only the items unique to that file, i.e., enforcement history, airman history, and should include a statement that the other documents are in the original copy of the master file.

(b) All related violations shall be forwarded to the region at the same time under the same cover so that they can be reviewed and evaluated simultaneously. Operations files shall be addressed to the operations branch in the regional flight standards division.

(2) Order 2150.3 contains a sample copy of FAA Form 2150-5, section A. The following are supplemental instructions to the instructions found in Order 2150.3, chapter 9.

(a) *Name.* Inspectors should always use the full personal or corporate name of the alleged violator. Persons must be indicated by their last names first followed by the first and middle names. Nicknames, diminutives, or initials are inappropriate. If the alleged violator is a certificate holder, the name given should be the name that appears on the certificate. The name of a legal entity should be given in full, including any d/b/a's. When applicable, the inspector should include the operator's four-letter designator.

(b) *Address and telephone number.* Inspectors should use the current address with zip code and telephone number with area code of the violator. If the inspector knows that a person cannot be reached at a permanent address and telephone number, the inspector should include a current temporary address and telephone number where the person can be reached. The inspector should then explain this in section D.

(c) *Date of Birth.* Since FAA Form 2150-5 is designed to be used for computer input in EIS, the inspector must give the date of birth by year, month, and day: 65-07-31. If the date of birth is not applicable, the inspector should leave this area blank.

(d) *Sex.* The inspector must enter the letter M or F, as appropriate. Inspectors cannot use check marks since an M or an F must be entered into the computer.

(e) *FAA Certificate Number.* When appropriate, the inspector shall enter the number of the certificate that was actually involved in the violation or any other certificate number the alleged violator holds. If the violator is not a certificate holder, the inspector leaves this box blank.

(f) *FAA Certificate Type.* The inspector enters the type of certificate associated with the certificate number entered in the previous box. If there is no certificate, this is left blank. Inspectors do not enter medical certificate numbers in this box.

(g) *Aviation Employer.* If the alleged violation is related to employment, the inspector enters the employer's name. However, the employment must involve a segment of aviation or aviation-related activity for the employer to be considered an aviation employer. In cases involving passenger violations, the inspector enters the name of the associated carrier.

(h) *Make.* The inspector enters the name or trade name of the manufacturer when an aircraft, component, or appliance is involved in or related to the alleged violation. Almost all operations violations involve an aircraft, but if an aircraft, component, or appliance is not involved, inspectors leave boxes 8 through 12 blank. If more than one aircraft, component, or appliance is involved, inspectors must attach additional copies of items 8 through 12 for each.

(i) *Model.* The inspector enters the model of aircraft as shown on the EIS computer printout or SDR Master Report Reference Microfiche.

(j) *Identification Number.* For an aircraft the inspector enters the registration number (N-number). For a component or appliance, the inspector enters its serial number Owner. The inspector enters the name of the current registered owner of an aircraft or the owner of the component part.

(k) *Address.* The inspector enters the current mailing address of the owner.

(l) *Date Occurred.* The inspector enters the date on which the alleged violation occurred, again by year, month, and day. The inspector should enter non-consecutive, multiple dates in the same manner as single dates. The inspector enters consecutive, multiple

dates in this manner: 87-05-18 through 87-06-21. Even though this conflicts with Order 2130.5, this is the correct way the dates must be entered in EIS.

i. If the violation occurred on a number of different dates over a period of time, the inspector should enter the date of the first occurrence, then include all the succeeding dates in sections B and D of the report.

ii. Sometimes investigation of an accident or incident reveals that a violation occurred before the date of the accident or incident. The inspector must enter the date of the violation, not the date it became known to the FAA. For example, if a person makes an improper record entry or fails to make a required entry, the date that the entry was supposed to have been made is the date of the violation, not the date when the inspector found the violation.

iii. After completion of the report, the inspector should check to be sure all dates and times correlate through the report.

(m) *Time.* The inspector should enter the local time, in 24-hour time reference, at which the alleged violation took place. If the specific time of day is not relative, the inspector should leave this blank.

(n) *Date Known to FAA.* The inspector should enter the date the violation was first known to an FAA investigating district office.

(o) *Region of Discovery.* The inspector enters the two-letter identifier of the Region where the district office discovered the violation. This may not be the region of occurrence since the violation may have occurred in one region but was discovered in a different region.

(p) *Location.* The inspector enters the name of the geographic location where the violation occurred. The inspector may use the name of an airport, a town, or a city, or the inspector may describe the location relative to a specific airport, town, or city. When the violation occurred on an airport, the inspector must also include the airport identifier.

(q) *Regulation Believed Violated.* To be sure that the regulations believed violated are cited correctly, the inspector needs to analyze all pertinent 14 CFR parts, subparts, sections, and subsections. Section 2, paragraph 2 contains a detailed discussion of how to read and analyze 14 CFR to determine what regulations have been violated. Some of the main

points to consider in citing regulations believed violated are as follows:

i. The inspector must be specific and identify the 14 CFR by section and subsection, e.g., 14 CFR § 91.409(a)(1) **{91.169}**.

ii. The inspector must cite all the 14 CFR included in the Summary of Facts.

iii. The inspector can cite only regulations containing mandatory or prohibitory language.

iv. The inspector must cite pertinent portions of 49 U.S.C. when appropriate. Some sections of the Act are more pertinent and understandable than the corresponding 14 CFR. For example, section 610(a)(2) of 49 U.S.C. lends itself much more readily to a good Summary of Facts statement on persons who violate 14 CFR § 43.3(a).

v. The inspector must be certain to cite only those sections of 14 CFR that are applicable to the particular operation or occurrence. For example, there are different rules applicable to the operation of an unairworthy aircraft depending on the type of operation, e.g., 14 CFR § 91.7 **{91.29}**, 121.153, or 135.25.

vi. The inspector may include a clear, concise statement of no more than 150 characters after a single citation if the inspector believes clarification is necessary.

(r) *Blocks 19 - 22.* For each block the inspector enters the appropriate two-digit code from Order 2150.3, appendix B. If a suitable code is not listed in that appendix, the inspector should enter 99.

(s) *Accident Associated.* If an accident was not associated with the violation, the inspector enters code 00. If an accident was associated, the code is 01. If the alleged violation caused the accident, the code is 02. The NTSB definition of accident shall be used in determining if an occurrence is an accident.

(t) *Security Program.* Operations inspectors leave this blank since it is for security violations only.

(u) *Type Action.* This is where the inspector enters the recommended action to be taken. The actions are listed in Order 2150.3, paragraph 903b(25).

i. In airman medical cases, the inspector does not have to fill out items 25 through 28.

ii. If the inspector recommends Administrative Action, the inspector must make sure that no

significant unsafe condition existed, there was no lack of competency or qualification involved, the violation was not deliberate, and the alleged violator has a constructive attitude toward compliance and has not been involved in previous similar violations.

iii. The inspector must remember that there is a statute of limitations for certificate suspensions. If it has been more than six months since the date of occurrence or if it is likely to be that long when regional counsel issues a certificate action, the inspector should recommend either a revocation or a civil penalty, as appropriate. The statute of limitations for civil penalties is five years from the date of occurrence. The inspector should discuss any exceptions to the six-month rule with the region before forwarding the file.

iv. Cases closed with “no action” must be based on a finding of NO violation or for insufficient evidence only.

(v) *Recommended Sanction.* The inspector enters whatever sanction is appropriate for the type of action taken, i.e.,

i. A warning letter or letter of correction for administrative actions.

ii. The dollar amount for recommended civil penalties.

iii. The recommended duration of a suspension

iv. This section may be left blank for any other type of sanction.

(w) *The reporting inspector's name* should be typed in the space provided on the form, but the inspector's signature is not required.

(x) *The inspector enters the appropriate region and field office identifier* (four digits) and the office manager's name.

(y) *The district office manager* must indicate the date he or she signed the report.

**4. SECTION B - SUMMARY OF FACTS.** The Summary of Facts is the nucleus of the entire investigation and report. The whole case centers around this portion of the report. Ironically, the Summary of Facts is also the crux of the EIR problem.

*A. Importance of a Good Summary of Facts.* A good Summary of Facts is of utmost importance to investigation and report of good quality. In the

Summary of Facts, the FAA charges the person with a violation, using the precise facts we must prove or disprove to determine whether we have a violation or not. A report can be processed with a poor Summary of Facts, provided the evidence is “good,” but seldom is the evidence good when based on a poor Summary of Facts. When there is a good Summary of Facts, the evidence is usually adequate, the Facts and Analysis section is complete, and the case can be readily processed.

### *B. Problems with the Summary of Facts.*

(1) Summaries of Fact have been too lengthy. Some inspectors have the idea that every fact that is gathered in the investigation must be reported under this item. In most cases, the entire Summary of Facts can be written in one sentence or in no more than one short paragraph.

(2) Summaries of Facts have been too short. Apparently, some inspectors at times get fixed on only one or two elements of the rule and simply ignore the rest.

(3) Some inspectors try to mix two or more sections or subsections of 14 CFR into a single statement, resulting in a Summary of Facts that fails to cover all elements of any of them.

### *C. Suggestions for Improvement.*

(1) *Keep it brief.* The Summary of Facts should be complete but brief. The inspector should simply state what the person did or did not do that was in violation of the regulations. The inspector should save the details, even though they may be facts, for the Facts and Analysis in section D.

(a) Some reports lead off with, “This report indicates a violation of the following Title 14 of the Code of Federal Regulations.” This is redundant since there is a space provided to indicate the violated regulations. This type of lead statement infers and often continues in the vein of “what was violated” instead of “what a person did or did not do that was contrary to the regulation.”

(b) The Summary of Facts is supposed to be a statement of the facts, not an apologetic, hedging opinion. Common lead-off statements that contribute to this are:

- “It is alleged that . . .”
- “It has been reported to this office . . .”

- “A Hewlett-Packard generator had exceeded . . .”
- “Aircraft records show . . .”
- “Aircraft owner complained of poor . . .”

(c) If the inspector has not proved beyond doubt, at least to him or herself, that this person is definitely in violation of 14 CFR before writing the statement, it is extremely doubtful that the inspector can prove it to anyone else. The inspector must be positive and specific in the factual statement. Better still, the inspector should get right to the point, i.e. --

- “Mr. Jones operated . . .”
- “Mr. Davis approved for return to service. . .”
- “Mr. Smith performed . . .”
- “Mr. Smith violated 14 CFR § 91.13 when he operated Cessna 152, N55468, . . .”

(2) During the course of an investigation, if an inspector keeps in mind an anticipation of what the Summary of Facts will have to say, the investigative directions will likely take new dimensions and directions in efforts that produce better related findings. Also, “blind alleys” and other nonproductive efforts can be avoided, giving better time/result factors. Finally, this same process will develop an inspector’s insight relating to “when to close” by making clear the point of diminishing or negative returns of investigative reports.

(3) A close review of 14 CFR section believed violated *AT THE TIME* the inspector composes the Summary of Facts is a good key both to revealing the nature of the act and thereby the evidence necessary to support it. If the inspector is watchful in this respect, the inspector may find that the infraction is more intense than realized or that there was no violation at all of the particular section involved.

(4) A wise inspector will continually monitor notices and orders issued by regional counsel and based on FSDO reports. This is personalized training in that it is related to a report familiar to each inspector who prepared or worked on it. These legal documents are usually in two sections: the “factual allegation” and the “violation alleged.” Where legal writes “you,” read the person’s name instead. From what follows, the inspector may learn a great deal about writing Summa-



ries of Fact. They often reveal a simple way to make a difficult statement.

(a) Regional counsel civil penalty letters and orders of suspension or revocation to the violator contain statements of violation similar to the following:

- “You violated 14 CFR § 43.13(a) in that you, in the performance of maintenance, failed to use methods, techniques, and practices acceptable to the Administrator.”
- “You violated 14 CFR § 43.15(a) in that you performed inspections on aircraft without determining whether the aircraft met all applicable airworthiness requirements.”

(b) Using the above two examples, for the EIR the inspector simply replaces “you” with the person’s name, the date, the aircraft identification, and, where appropriate, the specific act and the place of occurrence. That constitutes a complete factual statement.

(5) If the inspector has written a statement paraphrasing the regulations to determine regulations believed violated, the inspector needs only to paraphrase the remainder of the section, telling what the person did or did not do to be in violation in the words of the rule.

(6) Following are some good examples of Summaries of Facts which demonstrate how to paraphrase the regulation by stating what the person did or did not do to be in violation based on the wording of the rule:

(a) “Mr. Joe Smith violated 14 CFR § 43.14(b) in that he performed maintenance on Piper PA-23, N2468P, on May 30, 1990, in such a manner that the aircraft was not approved for return to service in a condition at least equal to its original or properly altered condition. (Exhibits 1 and 2)”

(b) “Mr. Joe Smith performed maintenance on Piper PA-23, N2468P, on May 30, 1990 at Santa Monica, CA and failed to use methods, techniques, and practices acceptable to the Administrator, in violation of 14 CFR § 43.13(a). (Exhibit 3)”

(c) The occurrence can be described in more detail and still be brief: “Mr. Jim Jones violated

14 CFR § 43.15(a) of the 14 CFR on May 15, 1990 when he performed an annual inspection on Cessna 310, N900C, and approved it for return to service without determining whether the aircraft met all applicable airworthiness requirements. Airworthiness Directive 69-14-1 was not complied with. Exhibits 4 and 5)”

(7) An acceptable, alternate method of constructing a good Summary of Facts is to begin with a lead-in paragraph that briefly describes the occurrence. This method works very well when there are a number of violations of different 14 CFR sections and subsections. However, the use of this method could lead to a lengthy Summary of Facts, such as has been condemned above, if the inspector is not careful. If the inspector stays with a short lead-in paragraph stating the essential facts, this method is as good as the other.

(a) The lead paragraph should name the person; identify the aircraft, date, time, and location; and tell in a few words what actually occurred--in plain English.

(b) The inspector should then write a brief, factual statement on each 14 CFR violated by section and subsection, telling what the person did or did not do to be in violation and paraphrasing the words of the rule.

(c) The following is an example of this acceptable, alternate method of writing a Summary of Facts:

“On February 4, 1991, at about 3:50 p.m., Mr. Mike Jones, flying Piper N34567, the property of another, with two passengers on board, flew less than 500 feet over persons and property in a housing area in mountainous terrain near Jamul, California (Exhibits 1-5, 8, 10, 11, 13). During this flight, he violated:

“(1) 14 CFR § 91.13 when he operated an aircraft in a careless manner, endangering the aircraft, the lives of his passengers, and persons and property on the ground by flying at altitudes of 70 to 300 feet above the surface. (Exhibits 1-4, 8, 10)

“(2) 14 CFR § 91.119(c) when he operated an aircraft closer than 500 feet to persons and structures on the surface in other than a congested area. (Exhibits 1-5, 11)”

(8) In summary the inspector must keep in mind the following points when constructing the Summary of Facts:

(a) Make a concise statement of established facts that are essential to proving the violation of each regulation believed violated.

i. Be specific, simple, and positive.

ii. Use only one statement for each specific subsection of regulation violated.

iii. Follow each statement with the exhibit number that is the prime proof of violation of that section.

(b) The wording of the Summary should tie directly to the wording of the regulation.

i. Show 14 CFR violated by the action of the fact, i.e., what was done or not done that resulted in a violation.

ii. This can best be done by editing and paraphrasing the particular section or subsection of the 14 CFR, replacing words like “no person” or “a person” with the name of the person in violation.

(c) Briefly identify who did what, when they did it, where they did it, why it was in violation, and how it occurred--as appropriate to the elements of the regulation.

i. State only what is proven in the file.

ii. Be prepared to prove all of it.

iii. Be sure that the regulation related to the Summary of Facts is not a definitive or explanatory regulation, such as applicability. Look for “no person may. . .” and if that is not found somewhere in the section involved or somewhere that compels compliances with the section, the inspector might not have a violation of the section proven--no matter how much evidence is enclosed.

(d) When there is insufficient evidence to prove the case, so state that, and close the report out without action.

**5. SECTION C - ITEMS OF PROOF.** When investigating a case, the inspector should gather anything which may be pertinent to that case. Concern about “rules of evidence” is not important at this stage.

*A. Format.* To assist in writing the Facts and Analysis and to help the reviewers, the inspector should list the Items of Proofs (exhibits) in chronological order by

date, according to the sequence of the investigative events.

(1) The inspector should start the list with the telephone record, incident report, complaint, or whatever brought the occurrence to the attention of the FSDO.

(2) To keep it simple, the inspector should just add each primary exhibit to the listing as the investigation progresses.

(3) Technical supporting exhibits should then be grouped with the primary exhibits to which they relate. The dates on technical supporting exhibits mean nothing as far as chronological listing goes, but they may be important to show currency at the time of the violation.

*B. The Law of Evidence.* Simply put, the Law of Evidence establishes whether evidence is admissible or acceptable or not. Evidence is only admissible if it is relevant, material, or competent. (See section 3 for a full discussion of evidence, including hearsay.)

*C. Proving and Circumstantial Evidence.* Only salient (proving) evidence listed in section C should be referenced in section B.

(1) The inspector submits all evidence to support the contention that an infraction did, in fact, occur. The inspector also submits evidence concerning the background and circumstances (both mitigating and aggravating) surrounding the event.

(2) By referencing only salient evidence relied on to establish an act contrary to a regulation, the inspector can save many hours in the review process and in conferences with regional counsel.

(3) It stands to reason that if the evidence on which the inspector relies as proof is insufficient, all the other evidence used to establish environment and circumstances would be to no avail. The exception to this is when the inspector must rely on a preponderance of circumstantial evidence.

*D. Sufficient versus Insufficient Evidence.* When evidence is insufficient for a legal enforcement action, it is insufficient for any enforcement action. Either the person did it or did not do it. Therefore, either we can prove or we cannot prove it. This is the end of “on and off” options, i.e., we cannot say, “either we report it or we do not.” If we have a proven infraction, it must be reported. It is a matter of degree and method (legal versus administrative). It seems to be well understood

what administrative violations are; however, we want to emphasize what they are not. They are not a procedure for reporting an infraction based on inconclusive evidence. If there is insufficient evidence, the case must be closed out with no action.

#### *E. Contents of Exhibits.*

(1) When listing exhibits, the inspector should give a brief description of each exhibit. This will assist the reporting inspector, as well as other reviewers of the file, when searching for pertinent information. These descriptions have special value in complex cases or where the inspector wants to emphasize an exhibit or a point within an exhibit that is considered significant or controversial.

(2) If witness statements do not include addresses and telephone numbers, these should be listed with the pertinent Item of Proof (exhibit). For example:

“1. FAA Form 1360-33, Record of Telephone Conversation, with Harold Gibbits, dated 6/1/90, 224 Rae Avenue, Center, CA 92222, (213) 555-8948.

“2. Statement of Mr. J. Jones, dated 6/5/90 - eyewitness account of incident; telephone (213) 555-8946.

“3. Aircraft Log, page 17 - last recorded annual inspection, dated 2/7/89.

“4. Cessna 610 Airplane Flight Manual, page 27, fuel system.”

*F. Notice of Investigation and Response.* In all cases the inspector must include the notification of investigation or state in the Analysis of Section D that an oral notice was given. Also, the inspector must always include the violator's response. In short, the inspector should always give the violator an opportunity to explain, excuse, or deny and then document both the opportunity and refusal, if any.

*G. No Action - Insufficient Evidence.* Many violations have occurred and the FAA is aware that they have occurred, but we cannot establish proof because of insufficient evidence.

(1) Inspectors can take a positive approach to this problem by accentuating efforts toward productive, provable cases and by increasing surveillance in

suspect areas to obtain **first** compliance or later, if required, evidence to prove that a violation occurred.

(2) Inspectors shall remember, however, that they should not conduct “stake-outs” and actually allow someone to violate a regulation when it could be prevented. The only exception to this may be when someone deliberately continues to operate in violation of 14 CFR.

#### *H. Effectiveness of Documentary Evidence.*

(1) When an infraction involves an uninspected aircraft or an airman lacking logbook endorsement, the inspector can use the following types of documentary evidence. They are listed in descending order of effectiveness:

(a) The logbook itself, which, however, cannot normally be taken.

(b) Certified photocopy of pertinent pages covering the time in question; dates are important.

(c) Statement of an FAA inspector who examined the logbook.

(d) Admission of the violator.

(e) A computer printout from the aircraft registry or an EIS printout.

(2) The inspector should remember that although logbooks can later be subpoenaed, they can also be altered, corrected, or “conveniently lost” after the inspector returns them. The inspector needs to make copies of pertinent pages as soon as possible.

(3) The inspector should watch out for “traps.” The aircraft could have been inspected, but that fact was not recorded. The pilot could have had the proficiency check, but the check airman did not record it. We can only file violations on what we can **prove has occurred, not on what appears to have occurred.**

(4) The inspector should always document the violation history of the alleged violator and include the EIS computer printouts on the aircraft and airman. The official violation history may be obtained only the AIDS/EIS Display and Profile.

(5) All copies of Items of Proof, except for physical evidence, must accompany the report.

(a) Each Item of Proof shall be numbered and tabbed consecutively as an exhibit.

(b) Each exhibit, including a brief statement of its content, shall be listed in an index to this section

of the report. The inspector should keep the index in a logical sequence to aid in reviewing the report.

(c) The inspector must not mark on or deface original exhibits. If marks must be made, the inspector can use plastic overlays or mark on a copy.

(6) All copies of Items of Proof must be legible, and official documents must be certified. Copies of published documents need not be certified.

(a) Whenever making copies of documents during an accident or incident investigation, the inspector should prepare enough copies to have some available for any possible EIR.

(b) Copies made from earlier copies of documents often are not legible.

(c) Inspectors must not sign certified copy statements unless the inspector personally made the copy. If a clerical or secretarial person made the copies, that person must sign it.

(7) When preparing investigative reports, the inspector should remember that the reviewers will not have had the advantage of the inspector's knowledge of the case facts. Therefore, whenever photographs, sketches, drawings, copies of pages from books, etc., will materially contribute to a clearer technical explanation of legal evidence, the inspector should include them with the report. The inspector must be sure to number the pages of multiple-page exhibits, page 1 of 3, page 2 of 3, etc.

*I. Witness Statements.* Using the techniques on active listening in section 1, the inspector should interview and obtain written statements from all knowledgeable witnesses or at least from a representative number if a crowd witnessed the violation.

(1) The inspector should select the best witnesses based on their knowledge and competence to testify.

(2) If an inspector witnesses a violation or becomes knowledgeable of anything pertinent which is not contained in other witness statements, the inspector should prepare and sign a personal statement.

(3) The inspector should always remember to interview and obtain statements from the following persons when they are pertinent to the investigation:

- (a) The pilot-in-command.
- (b) The other pilot and passengers.

(c) **All** involved air traffic controllers.

(d) Airport personnel who may have serviced an aircraft or witnessed its arrival or departure.

(e) Bartenders or food servers who may have served the person before or after a flight. This is very important in "alcohol" violations.

(f) State and local police usually submit good witness statements, but the inspector often has to "go after them."

(g) Other persons who work or reside in the area where the violation occurred. Everyone does not complain. Sometimes a knock on a few doors can be rewarding in obtaining witness statements.

(4) When a person refuses to or cannot write a statement, the inspector may assist in preparing the statement but must not dictate it.

(5) Statements should be complete, concise, and to the point. They should convey what that person said, did, or perceived by their senses. The inspector should include the witness' complete name, address, telephone number, occupation, and aeronautical experience, if any. Any opinions the witness stated should be shown as such.

(6) If a witness refuses to sign a statement after it is written, the inspector should ask the witness if the witness agrees to the substance of the statement. If the witness agrees but still refuses to sign, the inspector should make a notation to that effect, date and sign the statement, and ask other witnesses present to sign it also.

#### *J. Other Forms of Documentary Evidence.*

(1) When *photographs* are used as essential evidence, it is extremely important to have names and addresses of photographers; the date and time the pictures were taken; the type of camera, focal length of the camera lens at infinity, etc.; the type of film used; and who has custody of the negatives.

(2) *Charts, maps, and diagrams* can be very helpful to show airports, terrain, congestion, obstructions, etc. They may also be useful in interviewing witnesses and evaluating their statements, establishing the degree of hazard involved, etc. The inspector must be sure to explain the intended purpose of charts, maps, and diagrams in section D of the report. The

inspector must always include a copy of the TCA chart which was current at the time of a TCA violation.

(3) It is beneficial for FSDO's to establish a written agreement with ATC facilities regarding notification procedures and procuring of *ATC records and tapes* as evidence.

(a) Inspectors request ATC to withhold tapes from service and to provide any appropriate records and tapes when there is an indication of a violation. The inspector shall also notify ATC within five days whether to send the records and tapes to the FSDO as soon as possible or to put the tapes back in service.

(b) When requesting tapes, inspectors should ask for only the portion pertinent to the violation. They should cut and preserve that portion of the original tape for transcript if needed. A transcript is not needed unless regional counsel request it.

(4) If weather is involved in the violation, the inspector shall obtain certified copies of *pertinent weather data* from the National Weather Service. The inspector must also include a weather analysis in Section D of the report.

(5) The FAA is authorized to obtain and use aircraft *flight recorder tapes* in any investigation, including enforcement action (14 CFR § 13.7). However, they must not be used to discover any violations when there is no other evidence. Flight recorder tapes shall not be used as evidence except to corroborate other evidence or to resolve conflicting evidence. Therefore, the inspector shall coordinate use of flight recorder tapes with the regional office. If they are used, a certified readout of the tape is required. If the NTSB has the tapes, the inspector must request them in accordance with Order 2150.3. During the readout of the tapes, an FAA representative must be present to testify for authenticity.

(6) The use of *cockpit voice recorder tapes* as evidence in enforcement is prohibited by 14 CFR §§ 121.359 and 135.151.

(7) If other Federal or local law enforcement agencies are involved, the inspector should obtain records from them. The inspector should obtain pertinent *transcripts and certified copies* of court orders, convictions, etc. The inspector should include any foreign, state, or local laws if pertinent.

(8) *Medical records* can be obtained with the individual's consent or by subpoena. One exception is

that when alcohol or drugs are involved, pilots must now consent to provide pertinent records in accordance with 14 CFR § 91.17(c) and (d) **{91.11}**.

(a) Government medical records are subject to the Privacy and Freedom of Information Acts. Where required, the inspector should try to obtain consent from the owner.

(b) An airman medical information printout may be obtained from CAIS or an airman medical form may be obtained from AAM-300.

(c) If an airman does not have a current medical certificate or any other certificate for that matter, the inspector should request AAM-300 to send a "diligent search" certificate and include it in the Items of Proof.

(9) The inspector must take care that *physical evidence* is not lost, destroyed, damaged, or altered because the inspector may have to testify to it. The inspector should establish a chain of custody if necessary or lock the evidence up in a safe place, if possible. The inspector should be sure to at least take photographs of physical evidence and put those in the Items of Proof, along with an explanation of where the evidence is located.

*K. Other Pertinent Items of Proof.* Other Items of Proof that must be included when pertinent are:

(1) A copy of the *air operator or air agency certificate* held by the alleged violator.

(2) A copy of the pertinent part of the *operations specifications or waiver* when any of the provisions are believed violated.

(3) A copy of the pertinent part of the **airworthiness directive, manufacturer's service bulletin, logbook entries, or other aircraft maintenance records** when a maintenance or operational rule is involved.

(4) When the location is alleged to be a congested area and particularly when 14 CFR § 91.119(a) **{91.79}** is involved, *city maps or photographs* (35 mm aerial shots with negatives preferred).

(5) When airworthiness is believed to be involved, a separate signed *inspector's statement* (as an exhibit) which clearly states how the inspector concluded that the aircraft was in an unairworthy condition at the time of the operating violation, either by reason of not meeting type certificate design requirements or that the aircraft is otherwise unsafe for

flight. (Refer to section 5, Special Consideration, for a discussion of airworthiness.)

(6) When controlled airspace is involved, a copy of the appropriate *en route or sectional chart or approach chart*, effective at the time of the occurrence. Charts should be in their original form and not marked on.

(7) When an *accident or incident* is involved, a complete copy of the *report* when available as a numbered exhibit.

(8) When weather is involved, the following information that would have been available to the pilot shall be included:

(a) *Area forecasts*, with all SIGMET/AIRMET amendments.

(b) *Terminal forecasts*, with all amendments, for departure point, destination, and along the route of flight, including at least two hours before the flight began and two hours after the flight ended.

(c) On the weather reports and forecasts (except officially authenticated NWS copies) which will be referred to in the Facts and Analysis or elsewhere, the inspector should place a red check mark adjacent to the portions referenced and convert the Greenwich Mean Times and dates to the appropriate local time and dates with a pencil.

*L. Submission of Additional Evidence or Material.* Reporting of facts does not end when the FSDO forwards the EIR to the region. The inspector should forward any subsequent data immediately to the regional office and include the inspector's evaluation and recommendations concerning the material. Additional investigation may be required to evaluate any additional evidence intelligently.

*M. Summary.* Inspectors should check the following items to assure that they have a good Section C before forwarding the file for review.

(1) A **numerical index** of all Items of Proof, with a brief statement of contents.

(2) The Inspector has **numbered each Item of Proof as an Exhibit**.

(3) The inspector has **listed all items in a logical order**.

(4) The inspector has included **originals of documents when possible**.

(5) **Copies have been certified** when appropriate.

(6) The inspector has included **photographs of physical evidence**.

(7) **All evidence referred to in the file should be included in an exhibit, and all exhibits should be referenced in the Facts and Analysis.**

**6. SECTION D - FACTS AND ANALYSIS.** In Section D of the report, the inspector is given all possible latitude to build on the nucleus of the Summary of Facts. The narrative of all supporting facts, circumstances, and all the conditions surrounding the incident and the investigation must be complete. The analysis and conclusions must reflect the inspector's judgement concerning how safety was or was not affected.

*A. Inspector Recommendation.* The inspector must make a recommendation regarding the enforcement action and sanction in the concluding comments of this section. However, the Facts and Analysis will necessarily be relied upon by the flight standards division and regional counsel for determining precisely what the appropriate final action and sanction should be. It is therefore essential that both the Facts and Analysis be as accurate and as complete as the inspector can make it.

*B. Safety Implications.* The inspector's opinion regarding safety implications is very important, but the inspector should remember that the value of an opinion is directly proportional to the care exercised in setting forth the reasons supporting it.

*C. Format.* The general format of the Facts and Analysis is as follows:

(1) The *facts* are set forth in a complete, detailed, factual narrative of the investigation of the violation and are separated from the evaluation and analysis.

(2) The *analysis* is the inspector's evaluation and analysis of the results of the investigation.

*D. What Not to Include in the Facts.* Inspectors must not repeat in section D what has already been stated in the Summary of Facts, nor can inspectors simply refer the reviewers to the exhibits to discover the facts for themselves. Title 14 CFR need not neces-

sarily be mentioned in the facts, unless they are an integral part of the documents contained in the exhibits.

*E. The Facts.* The factual narrative shall include all facts and surrounding factual conditions and circumstances found and documented during the investigation. All documents in section C, Items of Proof, shall be referenced in the facts, and all documents referenced in the facts shall be included in the Items of Proof as exhibits.

(1) The inspector must describe all pertinent facts and circumstances in an organized, chronological fashion.

(2) The inspector must write the complete, factual case history--the story of what the investigation has provided.

(3) When writing the facts, the inspector should start with Exhibit #1 and then glean all pertinent facts from all the exhibits. If section C has been properly organized, the factual narrative will start with a brief description of the basis for the investigation, a complaint, accident, incident, surveillance, etc.

(4) The inspector should continue in sequence with a narrative about each pertinent fact documented in the exhibits.

(a) The inspector should consider everything in the witness statements and other exhibits as facts at this time, whether or not the inspector believes it. The inspector can state what he or she believes in the Analysis.

(b) The inspector must be sure to cover related investigative actions (the leads followed and what was found during the investigation), as well as the factual conditions and circumstances surrounding the violation and investigation. If these things are not documented in witness statements, technical publications, logbooks, manuals, etc., the inspector must be sure to include a personally signed statement to document them in the exhibits.

(c) The inspector must follow each pertinent fact taken from the exhibits with a reference to that exhibit, by page and paragraph if applicable, throughout the factual narrative.

(5) The depth and detail of the factual narrative will necessarily depend on the complexity and nature of the case and the amount of available evidence.

#### *F. The Analysis.*

(1) The Analysis gives the inspector the chance to express personal feelings, beliefs, opinions, and conjecture, based on the inspector's technical knowledge, skills, and expertise. It also provides the inspector with the opportunity to evaluate and analyze the facts, as presented in the Items of Proof and factual narrative, and straighten some things out regarding their worth, relevancy, reliability, and importance.

(2) Order 2150.3 requires that the following items be addressed in the Analysis portion of section D.

(a) How safety was or was not affected.

(b) The violator's attitude.

(c) The violator's enforcement history.

(d) Economic and livelihood considerations for the violator.

(e) Reliability of the evidence.

(f) Mitigating, extenuating, or aggravating factors.

(g) Inspector's opinions, feelings, and conjectures, labelled as such.

(h) A conclusion that justifies the recommended action and sanction.

(3) The sequence in which the Analysis items are arranged provides continuity to the Analysis process.

(a) The inspector should normally first analyze the evidence for its reliability and conflicts to determine and explain "what really happened" before assessing the safety involvement and impact.

(b) The inspector then follows this with the specifics of the event.

(c) The inspector ends with the conclusion which ties all the preceding together.

(4) If the inspector wishes to write the items in a different sequence, the inspector may do so.

(5) The inspector should have questioned witnesses during the investigation to determine their

aeronautical knowledge and experience so their reliability as witnesses can be evaluated in the analysis.

(6) The inspector should review the entire factual narrative carefully to determine if there is any conflicting evidence.

(a) Those things reported as facts when the inspector knew they could not be true are surely in conflict with other evidence. This provides an inspector the opportunity to straighten that all out. Any alleged violator who has denied being in violation in response to a letter of investigation is presenting evidence which is in conflict with other evidence, and that needs to be evaluated to determine its worth, pro and con.

(b) The inspector must review the Items of Proof to determine if there is any conflict regarding make, model, or registration number of aircraft involved. Conflicts in names, dates, and times also occur quite often. The inspector needs to point these out and give an explanation of why they are in conflict. Although they may not be in conflict, Greenwich Mean Time and Daylight Saving Time can be confusing, and the inspector must explain them when they appear to conflict with other times given in the report.

(c) If there is no conflicting evidence, the inspector must state that there is none.

(7) The safety aspects of a violation are of utmost importance. The inspector must analyze how safety was or was not affected in each case.

(a) The technical factors upon which the inspector bases his or her conclusions should be included, discussed, and referenced as appropriate. In some cases it may be necessary to illustrate safety implications through inclusion of performance data on aircraft or engines taken from technical publications. In such instances the source of information must be supplied along with essential details, such as engine and propeller model number, in order that the data may be readily verified.

(b) Technical publications, manuals, etc., which are included for reference, should be carefully reviewed to ensure that they were current at the time of the violation.

(c) When requesting reexamination or reinspection, as well as recommending other action, the inspector must be sure to document the need and explain why the inspector thinks reexamination is necessary. The inspector should also document the reluctance or refusal to submit and the issuance of the

reexamination letter. During any TCA violation investigation in which pilot competency becomes a question, a reexamination shall be requested regardless of the outcome of the violation investigation. It may consist of an oral examination, a flight examination, or both, as appropriate to the situation.

(d) The inspector must analyze any endangerment involved and determine whether it should be classified *actual, inherent, or potential*. Actual or inherent endangerment can be much more critical than potential endangerment; therefore, the case should be analyzed accordingly. Inherent endangerment can be characterized by someone simply being in the wrong place at a given time, such as an unauthorized intrusion in a TCA, regardless of whether there was any conflict with other aircraft.

(e) The inspector must analyze the “careless or reckless” aspects of a violation and elaborate on the willfulness, intention, and deliberateness of the violation, if applicable. The NTSB has determined that “reckless” operation results from a deliberate or willful disregard of the regulations or accepted standards of safety so as to potentially or actually endanger the life or property of another. (Refer to section 5, Special Considerations, for a detailed discussion of careless and reckless.)

(f) The inspector must consider and analyze the safety impact in regards to the certificate holder’s responsibility level, private versus ATP, air carrier operation versus general aviation operation, etc.

(g) If airworthiness is involved, the inspector must analyze and evaluate each airworthiness discrepancy with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness.

(h) The inspector must also keep in mind that the NTSB decisions which have been made in regards to aircraft airworthiness: “To be airworthy an aircraft must conform to its type certificate as well as be in condition for safe operation.” Conversely, where the evidence clearly demonstrates that the aircraft is not in condition for safe operation, the NTSB will undoubtedly sustain a finding that the aircraft is unairworthy. However, to show nonconformance with a type certificate, the inspector must have positive evidence concerning the contents of the type certification data and the particulars in which the aircraft in question differs from that data.



(i) If unairworthiness is a judgement, the inspector must be sure that there are expert witness statements to back up an inspector's statement. An inspector statement may not carry any more weight than the alleged violator's statement on its own.

(j) If the inspector does not believe safety was involved, then the inspector must so state.

(8) The inspector shall determine if there are any **mitigating or aggravating circumstances** involved in the violation or in the investigation and analyze and report them. Mitigating means to cause to become less harsh or hostile; aggravating means to make worse or more severe.

(a) Mitigating circumstances are sometimes included in the evidence but not analyzed by the inspector. Other times, mitigating circumstances have not been included in the EIR but kept in the FSDO file. **Nothing shall be kept in the FSDO file that is not in the official file.** If it is worth keeping, it is worth including in the report.

(b) FAA investigations are not designed to "hang it on" an individual but are a **diligent search for all related facts, conditions, and circumstances** reasonably obtained and consistent with the occurrence. In other words **we are as compelled to report mitigating circumstances as we are those that are aggravating.** A good report reflects a clinical approach devoid of personal involvement.

(c) If there are no mitigating or aggravating circumstances, then the inspector must so state.

(9) The reporting inspector has all latitude for reporting personal opinions, feelings, and conjecture as long as they are reported as such. Remember, however, that the value of an opinion is directly proportional to the care exercised in setting forth the reasons supporting it. It may be helpful for the inspector to give an opinion of what caused the violation to occur, but the inspector needs to be specific in commenting, even when the opinion cannot be completely supported by facts. The inspector's opinion is especially valued in his or her particular area of aviation technical expertise. If it has not been covered elsewhere in the report, the inspector should provide an opinion on the following:

(a) *Carelessness* on the part of the alleged violator or failure to exercise proper care.

(b) *Alleged violator's skill or judgement.*

(c) *Adequacy of training or lack of proficiency*

(d) *Lack of qualification and/or competency.*

(e) *Lack of proper supervision.*

(f) *Poor or inadequate record keeping system, etc.*

(10) Whenever possible, the inspector should discuss the violation in person with the alleged violator before writing the report. This allows the inspector to discern the person's attitude and to gather other personal knowledge of the person which could be helpful in analyzing the situation.

(a) The age, experience, past record, general reputation, attitude toward safety and compliance, and the economic status of the person or organization involved should be set down and taken into consideration. The inspector should also consider the person's cooperation, or the lack of it, during the investigation.

(b) The inspector must be sure to consider and analyze previous violation history and how it may or may not relate to the case. If there is no violation history, the inspector must state so, not ignore it.

(c) In every case where corrective action has been taken or is in process, the inspector should include a description of such action along with the inspector's opinion as to its effectiveness.

(d) The inspector should also include special factors that bear on the type of sanction to be recommended. For example:

i. Before recommending certificate action, the inspector should consider the use that an individual makes of the certificate and how the loss of the certificate might affect livelihood.

ii. The inspector should consider the person's economic situation in order to use good judgement in recommending a civil penalty.

iii. Consideration of whether state, municipal, or company action has been taken can be very important in analyzing what FAA action should be recommended.

(11) In the Analysis the inspector must be sure to reference each supporting exhibit, just as was done in the Facts portion of section D. There may be additional exhibits the inspector wishes to include after

beginning to write the Analysis portion. If there are, the inspector must review the Facts and determine if there is need to expand on them and reference the new exhibits therein.

(12) In preparing the conclusion and recommendation, the inspector should carefully review all information that has been included in the analysis and simply state what the inspector's conclusions are based on. The inspector must keep in mind that the Analysis is the inspector's rationale for the enforcement action and sanction the inspector has recommended.

(a) In all cases the inspector must consider whether the sanction is to remedy, punish, or make an example to discourage noncompliance.

(b) An inspector should consider a **civil penalty** whenever the following elements are present:

- i. The violator holds no certificate.
- ii. No question of qualification is involved.
- iii. The case is too serious to handle administratively.
- iv. Suspension is not necessary for immediate corrective action.
- v. Suspension is unfair or will create undue hardship.
- vi. Suspension is not required for aviation safety.

(c) The inspector should consider the following points when determining **civil penalty sanctions**:

- i. The appropriate amount should be based on the facts and circumstances of the case and current FAA policy.
- ii. The normal maximum civil penalty for airmen is \$1,000.00 per rule violated.
- iii. The inspector may consider multiple citations for a single act or omission as one violation if a case does not involve flagrant violations or a repeat violator. In other words, violations of closely related regulations may be considered a single violation when determining civil penalty sanctions.
- iv. When multiple regulations are cited as a result of separate violations, the inspector may recommend a \$1,000.00 maximum civil penalty for each violation.

v. If a violation is a continuing one, each day may constitute a separate offense.

vi. If flight operations are involved, and the pilot-in-command or the operator is aware of the violation, each flight shall constitute a separate offense.

(d) The inspector should consider the following points for possible **suspension or revocation** of a certificate:

- i. Suspension or revocation action may be taken for punitive purposes when that is appropriate.
- ii. Suspension may still be recommended pending completion of remedial action (retraining or reexamination, etc.).
- iii. Revocation of a certificate or rating is appropriate where specifically authorized by 14 CFR or when the evidence establishes lack of qualification.

(e) **Suspension** of a certificate is usually recommended when:

- i. Safety requires it.
- ii. Technical proficiency or qualification warrants it.
- iii. The certificate holder resists reexamination or remedial training.
- iv. Reexamination or remedial training is not satisfactorily accomplished.
- v. Withdrawal of privileges is warranted for punitive action.

vi. If action has been taken by an employer or other agency, suspension action should still be recommended when warranted. Such action may be considered in determining the extend of suspension or the amount of civil penalty.

vii. If a certificate action is recommended to run concurrently with a company action, the inspector should include the exact dates of the company suspension.

(f) **Revocation** of a certificate is usually recommended when:

- i. The lack of capability is not immediately correctable.
- ii. There is repeated unwillingness or inability to comply.
- iii. There is continued use of the certificate which is detrimental to the public interest.

iv. The person's conduct demonstrates lack of qualification.

(g) **Deferred suspension** may be recommended when corrective action by the violator would best serve the purposes of the compliance and enforcement program. This is an "in-between" type of action that may fit a case that is too serious or does not otherwise qualify for an administrative action. Deferred suspension involves the following actions:

i. FAA issues a Notice of Proposed Certificate Action under 49 U.S.C., section 609.

ii. The certificate is suspended for a specific period, but the holder is provided an opportunity to avoid a sanction if suggested corrective action is taken before the date specified for suspension.

iii. When evidence is submitted that corrective action has been taken, the FAA waives the imposition of any suspension.

(h) *Emergency certificate actions* may be taken only when clearly needed in the public interest. If emergency action is warranted, it should have been thought of well in advance of the inspector's writing the summary of conclusions and recommendations. The following urgent considerations apply to all recommended emergency actions:

i. The regional flight standards division must be notified by telephone immediately when emergency action is contemplated.

ii. With regional concurrence, action must be taken immediately when the need is recognized.

iii. Emergency action is not to be used for punitive reasons.

iv. The inspector must show evidence of lack of qualification or that the holder will likely continue not to comply.

v. An EIR must be completed and processed as soon as possible.

(i) *Other actions* available to the inspector, if warranted, are:

i. Seizure of aircraft if removal of the aircraft is suspected to prevent payment of a civil penalty or if further flight is contemplated in noncompliance with 14 CFR.

ii. Cease and desist orders if a violator continues to violate the regulations after other actions have been taken.

iii. Order of compliance and injunctions to prevent violations which FAA has reason to believe are about to occur.

iv. Criminal prosecution which should be turned over to the proper authority for investigation.

v. The inspector must immediately notify the flight standards branch or the division manager of all facts and circumstances and complete an EIR as soon as possible. This goes for any type of complex or emergency type of action mentioned in Order 2150.3 or this chapter. The flight standards division will make further notification to other, appropriate offices as necessary.

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## SECTION 5. SPECIAL CONSIDERATIONS

**1. GENERAL.** The following paragraphs contain information on some compliance areas where conflicting policies have frequently occurred. This information should be referenced by inspectors when investigating cases related to the special considerations.

**2. RECKLESS OPERATION OF AIRCRAFT.** Title 14 CFR § 91.13 {91.9} provides that, “No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.” Neither 49 U.S.C. nor the 14 CFR define “reckless” or “reckless manner.” The NTSB, however, has in several cases dealt with the allegation that a particular operations was “reckless” within the meaning of 14 CFR § 91.13 {91.9} and has thus contributed towards a definition of the phrase, “reckless manner.”

*A. NTSB Case History.* The cases studied by the NTSB indicate that recklessness involves *deliberate and willful conduct*, i.e., conduct that reflects a wanton disregard for others’ safety.

(1) The inspector can infer a deliberate and willful disregard of the regulations or safety standards from the circumstances surrounding a violation.

(a) It need not be established that a pilot intended to be reckless but only that he or she intended to engage in deliberate or willful action which resulted in a deviation from 14 CFR or from safety standards and which created actual or potential danger to the life or property of another.

(b) For example, the NTSB said of a pilot whom it found to have been reckless when the pilot deliberately operated an aircraft within 50 to 200 feet of another aircraft for a period of five to 10 minutes --

“... so long as the respondent intends to do the particular acts complained of, and the resulting action widely departs from the norm of reasonably prudent conduct, a finding of reckless operation does not require proof of the state of the pilot’s mind but can be inferred from the nature of [the pilot’s] acts or omissions and the surrounding circumstances.”

(2) In one violation the airmen flew VFR in formation and proceeded into a mountainous area in IFR conditions at dusk without ascertaining the weather conditions. Neither pilot held an instrument

rating, and one aircraft had an inoperative radio. The NTSB declared that the conduct of such a flight was reckless. The NTSB found that the conduct was “[. . .] so devoid of basic safe operating practices and adherence to critical safety regulations that it constituted a reckless operation.”

*B. Conduct Deemed Reckless.* The fact patterns of some individual cases tried before the NTSB provide guidance about the kind of conduct that the NTSB will deem reckless. For example:

(1) The pilot of an aircraft, in an attempt to land on a highway in a non-emergency situation, approached from the rear and struck a moving truck. The truck was substantially damaged, and the person who was sitting in the middle of the front seat of the truck was seriously injured. The NTSB, after considering the circumstances surrounding the incident, found that the respondent operated the aircraft in a reckless manner.

(2) In another case an airman willfully and deliberately made several extremely close passes near a van for the purpose of causing apprehension or bodily harm to the occupants of the van. The NTSB wrote, “Such piloting can only be characterized as reckless operation which created a serious hazard to the van.”

(3) The allegation of recklessness was affirmed by the NTSB in a case where an air carrier pilot operating an aircraft in scheduled air transportation took off from an airport after being advised that the reported visibility was 1/16 of a mile. The takeoff minimums were 1/4 of a mile. The NTSB held that the “. . . knowing violation of one of the standards applicable to air carrier pilots forms the basis of the finding of reckless operation.”

(4) In another case where the NTSB found recklessness, the pilot violated several 14 CFR. The airman carried passengers on several flights when not rated in the aircraft, had no instruction or experience in the aircraft, the aircraft had not been issued an airworthiness certificate nor had been inspected for the issuance of the certificate, the aircraft had not undergone an annual inspection, and the aircraft carried no identification markings. The NTSB considered the entire range of circumstances and the broad areas of non-compliance with the regulations under which

numerous flights were conducted, many on which passengers were carried, a reckless operation.

(5) In another case, the airman was acting as pilot-in-command of an aircraft on a VFR, passenger-carrying flight carrying parachutists for compensation. The pilot deliberately performed an aileron roll. The seriousness of this violation was accentuated by the fact that the aircraft was not certificated for aerobatics, two parachutists were in the air when the roll was performed, the roll took place at an altitude of 500 to 800 feet over a group of persons on the ground, and the flight was made for compensation. The NTSB found the respondent's violations to be deliberate and knowing and, therefore, reckless.

(6) In another case the pilot-in-command flew the pilot's personal aircraft on a VFR, passenger-carrying flight. During the course of the flight, the aircraft entered clouds and subsequently crashed into a mountainside. The NTSB held that the "... respondent's continued VFR flight into clouds in the vicinity of mountainous terrain demonstrated inherently reckless conduct."

(7) A pilot was found to be reckless when that pilot ignored specific air traffic control instructions. Contrary to ATC instructions, the pilot failed to report downwind, landed the aircraft instead of going around, made a 180° turn on the runway, and departed via a taxiway. The NTSB noted that the go-around instruction was given four separate times by the controller, yet the pilot persisted with the approach and landing. The NTSB also stated that, "... it appears that [the pilot] made up his mind to land the aircraft and no amount of instruction from the tower could keep him from that goal." The pilot's operation of the aircraft was characterized as reckless.

*C. Conclusion.* While there is no regulatory definition of the term, "reckless," it has been defined in cases decided by the NTSB. *A reckless operation results from the operation of an aircraft conducted with a deliberate or willful disregard of the regulations or accepted standards of safety so as to endanger the life or property of another either potentially or actually.* Accordingly, any such reckless behavior violates 14 CFR § 91.13 {91.9}.

**3. AIRWORTHY OR UNAIRWORTHY?** The term "airworthiness" or one of its derivatives, is also not defined in 49 U.S.C. or 14 CFR. Nevertheless, a clear understanding of its meaning is an essential tool for the compliance program. Airworthiness is a

concept that represents the substance of two of the most fundamental safety regulations, 14 CFR §§ 43.15(a) and 91.7(a) {91.29}.

#### *A. Regulatory Background.*

(1) Title 14 CFR § 43.15(a) states that each person conducting a 100-hour, annual, or progressive inspection required by 14 CFR part 91 must perform those inspections in such a manner as to determine whether the aircraft meets all applicable airworthiness requirements.

(2) Title 14 CFR § 91.7(a) {91.29} states that no one may operate a civil aircraft unless it is airworthy.

*B. NTSB Decisions.* The example below clearly expresses the view that an aircraft is airworthy only if it is capable of a safe operation AND it conforms to its type certificate.

(1) In this case the issue was whether the pilot had violated 14 CFR § 91.7(a) {91.29} by operating an aircraft that was not in an airworthy condition. The respondent had taxied the aircraft into a mud hole, causing the propeller to strike the ground. As a result one blade was bent and the other was nicked. Upon restarting the engine ran smoothly so that the pilot did not consider the damage to be significant. The pilot decided to give the aircraft a test flight and found that there was no unusual engine vibration or other indication of malfunction. The pilot then operated the aircraft from Nevada to Kansas to New York to Pennsylvania, and to several locations in Florida.

(2) Upon hearing the case after a subsequent investigation revealed the damage and the violation, the examiner held that the damage to the propeller caused it to be unairworthy and sustained the FAA allegation that the respondent had violated 14 CFR § 91.7(a) {91.29}. The examiner's findings were based on the theory that an aircraft is airworthy if it conforms to its type certification but that it is not airworthy if its original design and specifications are altered without FAA approval.

(3) The concept of airworthiness expressed in this case must be considered to be the correct one because it is the one which best lends itself to effective enforcement. It is supported clearly by some NTSB precedents and is reinforced by the framework of 49 U.S.C. and the practical operation of the FAA itself. The concept that an aircraft need only be capable of a safe operation to be airworthy cannot be applied effec-

tively because it places too much discretion in the individual pilot or mechanic, safety being a subjective value.

*C. Additional Interpretations.* A careful study of 49 U.S.C. indicates that the term airworthiness should be interpreted in the manner that it has been in the example above.

(1) Title 49 U.S.C., section 603(c) states that the registered owner of any aircraft may file an application for an airworthiness certificate. If the FAA finds that the aircraft conforms to the type certificate for that aircraft and determines, after inspection, that the aircraft is in condition for safe flight, the FAA issues the airworthiness certificate.

(2) The statutory language in section 603 clearly establishes that two tests be applied in determining whether the owner of an aircraft should be granted an airworthiness certificate. First, the aircraft must conform to the type certificate for that aircraft. Then, if that condition is met, the aircraft must be inspected to determine that it is in a condition which will permit its safe operation.

(3) The very term “airworthiness certificate” implies that an aircraft granted such a certificate is “airworthy.” Therefore, an aircraft denied such a certificate is not airworthy. The plain meaning of section 603(c) indicates that 49 U.S.C. intended that an aircraft should not be considered to merit the issuance of an airworthiness certificate unless it conforms to the type certificate applicable to it. Therefore, it can be argued that 49 U.S.C. established the concept of airworthiness to mean, “...to be in conformance with the applicable type certificate as well as to be in a condition for safe operation...”

(4) The practical operation of the FAA should also be considered in determining which concept of airworthiness is most appropriate. If the term airworthy were interpreted to mean only to be in a condition for safe flight, at times it would be unreasonably difficult, if not impossible, to enforce the regulations which turn upon the meaning of that term. In order to prove that a pilot operated an unairworthy aircraft or that a mechanic certified an unairworthy aircraft as airworthy, the FAA sometimes would be required to undertake an extensive test-flight program of an aircraft that did not conform to the applicable type certificate.

(5) Moreover, if airworthy meant only to be in a condition for safe flight, it would render the entire airworthiness certification procedure meaningless. Title 49 U.S.C. provides for the issuance of a type certificate--a certificate that includes the type design as dictated by the type certification data in the aircraft's operating limitations and any other conditions or limitations prescribed in the applicable regulations. Title 49 U.S.C. specifies that the type certificate is to be referred to in determining whether an aircraft should be granted an airworthiness certificate. However, if an aircraft need only be capable of safe flight to be considered airworthy, after the original airworthiness certificate is issued, any mechanic could modify a particular aircraft in any manner that pleased the mechanic and the aircraft would be presumed to be airworthy unless the FAA could prove that the modification was in some way detrimental to the aircraft's flight characteristics or structural strength.

*D. Conclusion.* To be airworthy an aircraft must conform to its type certificate as well as be in a condition for safe operation. A word of caution is necessary, however, if this concept of airworthiness is to be applied effectively in enforcement cases. Where the evidence clearly demonstrates that the aircraft is not in a condition for safe operation, the NTSB will undoubtedly sustain a finding that the aircraft was unairworthy. However, if the condition of the aircraft is such that it would not be considered to be in conformance with the type certificate, **yet it is not clearly unsafe for flight**, then the NTSB will probably not sustain a finding that the aircraft is not airworthy in the absence of positive evidence concerning the contents of the type certificate data and the particulars in which the aircraft in question differs from that data.

**4. VIOLATIONS ASSOCIATED WITH REGIONAL AND NATIONAL SPECIAL INSPECTIONS.** This paragraph contains information on some of the problems that occur when inspection teams discover violations.

*A. Problems with Special Inspection Violations.*

(1) Sometimes the inspector team does not discuss suspected violations found during the inspection with the operator or with the local FSDO during the inspection or at the debriefing. There have been times when the FSDO has been advised during debriefing that no violations were found, only to be followed later, sometimes much later, with a report

which indicates that a number of violations were found.

(2) Many times the team includes alleged violations in special inspection reports when there is insufficient evidence included with the reports to prove the violations.

(3) One way to diminish the effectiveness of an enforcement action, especially one with any complexity, is to have one inspector investigate the violation and another to write the report. It is impossible to assure a 100% transfer of technical information from the investigating inspector to the reporting inspector. Therefore, the quality, timeliness, and overall effectiveness of the EIR is significantly diminished. It has been proposed that the members of the inspection team who find the violations be responsible for writing the report.

*B. Solving the Problems.* Since the crux of the problem appears to be the hand-off of information from the investigating inspector to the reporting inspector, it appears that better coordination and coop-

eration during the inspection is needed to help solve the problem.

(1) The special inspection team leader should immediately notify the appropriate FSDO principal inspector of any suspected violations found during the inspection. From that point on, the principal inspector should assist in the violation investigation.

(2) Before the inspection is completed, or at least before the inspection report is written, the team leader or the principal inspector should read and analyze the regulations involved and write a preliminary Summary of Facts on each section of 14 CFR believed violated and assure that there is sufficient evidence available to prove every word of it, in accordance with the instructions in this chapter.

(3) Whoever writes the preliminary Summary of Facts should test the Summary of Facts and supporting evidence with the other inspector before citing the occurrence as a violation in the inspection report.